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& Woodward
A legal study
relating to coal
development

OLD WEST REGIONAL COMMISSION

A LEGAL STUDY RELATING TO COAL DEVELOPMENT-- POPULATION ISSUES

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VOLUME ONE

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RESPONDING TO
RAPID POPULATION GROWTH

PREPARED BY
KUTAK ROCK COHEN CAMPBELL
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OMAHA, NEBRASKA

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OLD WEST REGIONAL COMMISSION

A Legal Study
Relating to
Coal Development --
Population Issues

Volume One

Responding To
Rapid Population Growth

Prepared By
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September 3, 1974

Mr. Warren C. Wood
Federal Co-Chairman
Old West Regional Commission
2000 "L" Street, N.W. - Suite 404
Washington, D.C. 20036


Re: Contract No. 10470004
A Legal and Regulatory Study of
Coal Development

Dear Mr. Wood:

We are pleased to transmit, pursuant to the above contract, our report to the Commission. The substantive portions of the report are current as of this date. However, in view of the prolific legislative activity in the coal states during the past several years, we suggest that persons using the report be cautioned to consult their legal counsel in regard to the operation of any particular law.

We would like to thank the staff of the Old West Regional Commission for their continued assistance and support during our work on the Contract. As is noted in the bibliography section of the report, we had contact with and assistance from a great number of individuals and organizations. We would like to acknowledge and express our sincere appreciation to them for their support and assistance.

Yours truly,



William G. Campbell

WGC:ba
Enclosure

OVERVIEW OF VOLUME ONE

Volume One begins with a summary of the entire Study. This Summary also provides a brief synopsis of the contents of each of the six volumes comprising the Study. However, the Summary places greatest emphasis upon the substantive data and analysis contained in the remainder of Volume One and upon several of the conclusions produced by that analysis.

A detailed review of the experiences of state and local governments which have encountered the problems arising from rapid population growth begins with the section entitled "Responses of Areas of Previous Rapid Growth". This narrative description of eleven specific geographic areas which have undergone rapid population growth establishes the foundation for the remainder of the volume. The areas described were identified during a broad initial survey of areas which had confronted problems similar to those anticipated to occur in the States of Montana, North Dakota and Wyoming. These particular areas were selected because they presented a typical mixture of problems, because they presented atypical but especially important problems, or because they had responded to typical problems in unusual and significant ways.

A topical summary of the problems encountered both in those areas described in some detail and in other areas which were initially examined but not chosen for detailed analysis is contained in the subsection entitled "Problems Encountered". The "Governmental Reactions" section reviews responses of the areas surveyed in order to illustrate those basic ideas which may be particularly applicable to the population growth problems projected for the coal development region.

From an analysis of the various responses and their respective impacts, certain general principles which appear to be embodied by those responses have been articulated. A statement of these principles and their apparent foundation is the substance of the section entitled "Principles for Legislation". These principles are offered for the consideration of legislative bodies throughout the States of Montana, North Dakota and Wyoming as an opportunity for all of their constituencies to benefit from the experience of other regions which have previously been confronted with rapid population growth.

VOLUME ONE

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SUMMARY OF STUDY

Introduction

The roots of the economy of the Old West Region have always been deep in the soil. The population has been supported primarily by products of the land--crops, cattle, and minerals. Now, in parts of the Region, new growth is springing from another product of the land. Vast areas of Montana, North Dakota, and Wyoming are underlain by thick beds of coal. The burgeoning demand for energy has suddenly made marketing this coal not only economically feasible but almost a necessity.

The achievement of this country's official policy goal of self-sufficiency in energy will require the development of all of its energy sources. Over half of the country's coal reserves are west of the Mississippi River. Forty percent of these reserves are found in the Fort Union formation alone, underlying the northern Great Plains.

In the past, coal has been an Eastern product: only five percent of the coal mined in the country's history has come from west of the Mississippi. But in 1973 western coal accounted for over nine percent of total production,

and this percentage is expected to increase sharply in the next decade.

Mining this coal, transporting it, and converting it to other forms of energy through electric generating plants, gasification, or other means will require unprecedented infusions of money and people. For example, it is estimated that construction of a coal gasification plant with the capacity to produce 250 million cubic feet of gas per day will cost over \$400 million and require nearly 4,000 construction workers during the peak construction period. Such a plant will directly employ approximately 800 persons on a permanent basis.

Some areas in the Region have already felt the impact of coal development. For example, Costrip, Montana, site of Western Energy Company and Peabody Coal Company mines, has grown from 150 to 700 people in two years. Two 350 kilowatt electric generating units are now being built there, and the population is expected to reach 1,800 or more in the next few years. The population of Sweetwater County, Wyoming, site of the Jim Bridger Power Plant now under construction, has shot from 18,391 in 1970 to an estimated 45,000 in 1973. It is probable that in the next quarter

century several cities of one hundred thousand or more people will grow up in areas of the Northern Plains heretofore sparsely populated.

The future of the Region will be shaped by the responses of government and private enterprise over a period of many years. No master plan can be drawn now that will solve for all time the complex problems resulting from rapid population growth. Judgments and decisions are being made now, however, that will affect the future of the Region for many years. This study is intended to be a reference source to be consulted as these judgments and decisions are made. It will be useable at all levels of government, but it will be useful to private enterprise as well, particularly because of its treatment of financing problems that may be solved by joint action with political subdivisions. (For example, every revenue bond statute in the States of Montana, North Dakota and Wyoming is described in the study.) Above all the study is intended to be a practical tool that provides at least the starting point for analyzing any population growth problem which coal development may bring to the Region.

Scope of the Study

The study is both regional and nationwide in scope. In order to identify and evaluate the problems which may be expected to arise in areas of rapid population growth, a nationwide survey has been made of areas which have experienced such growth in the past. From this survey there has been distilled a summary and analysis of the kinds of problems which arise in rapid-growth areas, and a summary and analysis of the ways in which local and state governments have responded to those problems. This material is contained in Volume One, which also sets forth certain "principles for legislation" based upon the experience of these areas of previous rapid growth.

In Volume Two, selected statutes and ordinances from these other areas are reproduced. While they are intended for use as legislative models, like the principles for legislation they are intended to present ideas rather than precise statutory language. It is recognized that statutory details are likely to need modification as each governmental entity responds to its unique social and economic situation.

Responses of other areas are useful only to the extent to which they can be fitted into the legal structure of the area now faced with the problem. That legal structure for the States of Montana, North Dakota and Wyoming is set forth in four volumes.

Volume Three contains summaries of all of the statutes of Montana, North Dakota and Wyoming relevant to these subjects. The summaries are intended to give a brief overview of the means presently available in each state to control population growth or to finance facilities to accommodate it. The summaries are keyed to the statutes themselves so that detailed provisions may be easily found. This volume may be of particular interest to private companies because it describes the financing authority of political subdivisions in the three states as well as discussing taxing and zoning powers.

Volume Three also contains a comprehensive bibliography listing the main sources of information and assistance available to planners and others involved in the development of the Old West Region. The bibliography includes a list of organizations which can offer information and planning assistance; a bibliography of publications arranged by subject;

a list and description of model and proposed legislation; and a list of people and organizations contacted in the course of this study together with a list of relevant studies completed or now in progress in other parts of the country.

Volumes Four, Five and Six, respectively, contain all of the statutes of the States of Montana, North Dakota and Wyoming relating to population growth. These volumes represent valuable tools for the planner in any of those states in that they are comprehensive and current to the date of this study. Furthermore, the statutes of all three states are arranged according to the same logical subject-matter outline so that finding is simplified and quick cross-reference is easy from one state to another on any subject.

Summary of Contents of Study

Perhaps one of the best guides to effective response to rapid population growth may be found in the responses of regions which have faced the problem in the past. An initial survey was made by contacting the planning agencies or governing bodies of all counties in the United States which during the period 1960-1970 experienced a net in-

migration equal to more than fifty percent of their initial population. Other areas of interest were identified through reference sources or through personal contact with state and federal agencies, through organizations such as the Urban Land Institute, the American Society of Planning Officials, and through private enterprises interested in coal development. These "areas of interest" include areas which have adopted unusual responses to growth problems.

Not all areas of rapid growth have experienced the same problems. Seemingly the only universal problem has been providing adequate housing and associated utilities. Most differences are accounted for by differences in the nature of the population coming into the area. Temporary residents such as construction workers impose different demands for services than do permanent residents, and there may be a reluctance to build facilities having high capital cost, such as sewage treatment plants, to provide for a transient population. Second-home owners and retired persons represent other groups which impose different kinds of demands upon the community. Other differences in kinds of problems resulting from population growth are ascribable to

differences in topography and climate. Water shortages occur in some areas, smog in others, ground water pollution in others.

There was, however, a core of common problems which did not vary greatly from area to area, and which may be expected to occur in any area of rapid population growth. This common core includes the following:

Housing

In those areas in which the population influx is made up of wage earners who expect to be permanent residents, there will be a demand for permanent housing. The main problems which arise are those of land use control and housing price increases. An influx of temporary workers may lead to an equally large housing demand but no pressure to develop on a permanent basis. Instead, rental housing prices skyrocket and mobile home courts proliferate.

Utilities

Demand for sanitary sewers, water supply and power may outstrip the rate at which supply can be increased. If the population increase is temporary, facilities may simply remain overloaded because the high capital cost

of new facilities could not be amortized within the short period for which demand lasts.

Services

Fire protection, police and health care may become inadequate. The problem may become especially acute if growth occurs outside incorporated areas. However, financing these services may be less of a problem than financing utilities because a larger proportion of the cost is for operations instead of fixed assets. Most of the cost thus may be paid from tax revenues, which may be adjusted more readily than longer-term obligations.

Schools

Schools represent the single largest expense of local governments. The cost of schools is thus likely to be the major dollar burden imposed by rapid population growth. The interrelationship of problems arising from growth is illustrated by the fact that some growth areas have encountered difficulty in recruiting teachers because of local housing shortages. Demand for schools is somewhat greater per capita with a permanent population increase than if the increase is due to temporary residents, who normally bring fewer dependents with them than do permanent residents.

Transportation

The most immediate transportation problems for most localities are congestion and the increased cost of road maintenance. If the influx is temporary, these may be the only transportation problems. If growth is permanent, the transportation network will of course have to expand in all aspects, including road, rail and air.

Environment

In a population boom, regulation tends to lag behind the need for it. This, plus reluctance to construct treatment facilities to accommodate temporary population increases, has led to pollution of air and water and loss of scenic attractions.

Crime

The experience of areas of previous rapid growth indicates that crime rates are as likely to increase in areas where the influx consists of relatively high income families as in areas where it consists of construction workers or other temporary residents. However, where population density remains low there is likely to be no noticeable increase in the rate of crime even though population increases substantially.

Intergovernmental Barriers

In most states, legislative power is solely in the hands of the state government unless expressly delegated. County or municipal governments are thus able to solve problems only within the range of powers which the state allows them to exercise. In many states, this range is limited. But state reaction to local problems may come slowly, if at all, especially if the necessary controls (for example, land use controls) are not normally exercised by the state. The result is that no one solves the problem.

State limits on the ability of local governments to contract debts or to increase their rate of taxation also hinder the local government in its attempts to meet the problems of population growth.

A number of solutions have been attempted to these growth problems. The major ones are the following:

Traditional Approaches

The Standard Zoning Enabling Act promulgated by the Department of Commerce in the 1920's has been adopted by all states and long represented the standard method of growth control. It enables municipalities and counties to zone land by use. This is typically coupled with reve-

nue raising by means of a property tax, with large capital improvements financed by long-term bonds.

Use zoning in itself has proved to be ill-adapted to rapid growth situations. The main difficulties that appear in a growth situation are that zoning is either not applied extensively enough in the beginning or is applied in the wrong places, or that under population pressure the zoning structure collapses in a flood of rezonings. Rigid zoning inhibits growth; permissive rezoning abdicates control.

Traditional means of financing growth should be viewed as separable from traditional zoning. In some rapid growth situations these have proved adequate to meet the needs of the community; but this can probably be expected only if the population influx is permanent and state law does not greatly restrict the rate at which local governments may increase their tax levy.

Special Tax Concepts

One means of financing local facilities to meet growth problems is to tax the source of the growth and return the funds to the locality. An oil production tax in North Dakota and a mineral severance tax in Wyoming and Montana are examples of this. The argument favoring this is that

income to the locality is directly related to private income from the source which is attracting growth, and in most cases this can be expected to be roughly proportional to the growth attracted. Thus growth tends to pay for itself. However, the solution is difficult to apply in many situations. For example, a temporary influx of construction workers on a coal gasification plant offers no easily-taxed revenue source, since income from the plant does not begin until the population has begun to decline.

In the State of Alaska, a property tax is levied by the state on property connected with the Trans-Alaska Pipeline, and municipalities may levy only a restricted tax on those properties. At the same time, the state has authorized subsidies to ease the burden of increased demand for services in communities where growth is caused by the Pipeline. Although the state property tax is not necessarily used to provide the subsidy, such a connection represents one means by which communities could be assured of sufficient financing for utilities. The advantage of state participation is that the locality can plan for future growth without fear that it will incur an overwhelming

debt for unneeded facilities if the expected population increase does not materialize.

Timed Growth

The timed growth plan for directing the growth of a locality was developed in Ramapo, New York, in 1972 and has since been adopted by a number of other localities around the country. The basic plan is that all available land is zoned in advance for its final use. Actual development of any given parcel is allowed only after certain municipal facilities are in place, and the facilities are to be constructed by the city in accordance with a specified time schedule. Thus the ultimate use and approximate date of development of every parcel of land are known from the beginning. The plan has been sustained as constitutional by the Court of Appeals of the State of New York against charges that it was an unconstitutional "taking" of private property. The parties did not, however, make the argument that has been advanced in other cases, that growth limitation is an unconstitutional restriction of the individual citizen's right to travel which has been held to include his right to settle in the area of his choice. Violation of this right has been the basis for overturning

a growth-control plan which had a similarly restrictive effect, in Petaluma, California. The court also saw the restrictions on the use of property as merely "temporary", even though it might last as long as 18 years. In light of these considerations it cannot be assumed that the Ramapo plan would automatically be approved by a court in any area in which it was adopted. Moreover, the plan was designed to combat suburban growth in an area where open land is scarce, where there is political pressure to preserve what open land remains, and where the kind of growth is perfectly predictable. In the coal regions open land is plentiful, there is at least as much local pressure for as against development, and the kind of growth to be expected in any given area is much less certain. Thus the timed growth plan may not be relevant to the desires and needs of the communities.

Dedicated Services and Impact Fees

Under the Ramapo plan, the cost of services is borne by the municipality but is postponed to a more convenient date. Dedicated services and impact fees, on the other hand, transfer the capital cost of public utilities and services to the developer, who of course may be expected

to pass on some or all of it to the ultimate user. The earliest form of dedication requirement was the subdivision ordinance under which a developer could be required to dedicate streets, public schools or parks if the need for the facilities was uniquely attributable to his development. A more comprehensive requirement has been adopted by Loudoun County, Virginia, where the developer must dedicate all the necessary facilities for his development or pay the entire "net public cost" directly as a fee.

This approach may be more viable in the Region than the Ramapo plan. It is more flexible and easier to adapt to changing circumstances. Also, it relieves municipalities of the initial capital cost of facilities. In effect, it provides an alternative means of financing public facilities, and thus be an attractive alternative in areas which have a limited debt capacity but which have broad zoning powers or subdivision regulation powers.

The Loudoun County ordinance has not been subjected to a court test. Some state courts have upheld and others have rejected the exaction of schools and parks from developers. In view of these mixed precedents, the reception

which the courts of other states may accord to dedication requirements or impact fees cannot be predicted with any certainty.

Population Limits

A number of localities have attempted to place direct or indirect limits on population instead of or in addition to planning for growth. The limiting of population by large-lot zoning has occasionally been approved by the courts on the theory that aesthetic considerations are sufficient excuse to support the zoning. Language in a recent United States Supreme Court decision strongly indicates that large-lot zoning for such purposes is proper. However, a Colorado court has held that the City of Boulder may not limit population by withholding sewer and water services which it has the present means to supply; and, although the New York court upheld the timed growth plan of the town of Ramapo, a Petaluma, California plan with the same growth-limiting effect was declared unconstitutional by a federal district court, as an interference with individual rights to travel. A citizens' initiative in Boca Raton, Florida, has limited the number of dwelling units in that town to 40,000. That limit is currently being attacked in the courts.

While a population limit, if not overturned by the courts, can be effective in preserving the amenities of life for a given locality in a rapid-growth area, it clearly cannot be effective on a wider scale in the face of an increasing population; and the adoption of such limits must inevitably lead to more sprawling development than would otherwise occur--the problem is spread thinner but over a wider area. Unless there is a regional planning body, planned growth may thus be traded for unplanned growth in outlying areas.

Federal Aid

Costs of schools and other public facilities may be funded by the federal government under certain programs when the burden on local facilities arises from federal activities. These programs are not discussed in detail as they are not expected to be applicable to the coal development areas.

New Towns

Currently under way in this country are some three dozen developments which have been styled "new towns." Only one of these, Soul City, North Carolina, is "new" in the sense of being self-contained and economically self-suffi-

cient. A second such really "new" town has been proposed to be built on the Navajo Indian Reservation located in Northern Arizona and New Mexico and Southern Utah. The town would support proposed coal gasification plants there. All of the recent "new towns" depend to some extent upon existing population centers for employment and services, and most are satellites of existing cities.

The legislation which set in motion the development of many of these new towns was Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 3901 et seq.), under which the United States may provide bond guarantees of up to \$50 million on a single development. However, the Office of New Communities Development has been understaffed and some programs under the Act have gone unfunded. Combined with the moratorium on government housing funding, these factors have made questionable the extent to which a developer should hope for federal guarantees for new towns.

Eligibility for Title VII financing is not limited to private developers. At least three new towns, backed by Title VII grants, have been begun by the State of New York through its agency the Urban Development Corporation.

In those new towns which are not self-governing, public services may prove to be a problem. Unincorporated new towns must depend upon either county or private organizations or upon special districts for water, police and fire protection, and other services. Reliance upon outside private organizations ordinarily means that planning and services are fragmented, while county governments ordinarily are ill-equipped to provide municipal services. Possible alternatives are government by a private homeowners' association or provision of services by the developer himself. The last-mentioned course is normally avoided because it imposes heavy initial costs upon the development, thus forcing up prices; but it remains a possibility for "company town" new towns, in which a profit need not be made on the development of the town itself.

Statewide and Substate-Regional Planning

A number of states faced with rapid growth over a large portion of the state have reacted by removing control of land use from the hands of local government. The states of Hawaii and Vermont, and the territory of Puerto Rico, have placed ultimate control of land use in the hands of a state planning board, the State of Maine has done so for develop-

ments having a significant environmental effect, and Montana has done so for public utilities. Other states have state control to a lesser extent. Oregon and Florida, for example, have statutes giving the state control over designated developments of state-wide significance or critical ecological concern.

In other instances, states have removed planning control from local hands into the hands of a sub-state regional body rather than a state-wide agency. California's San Francisco Bay Conservation and Development Commission is perhaps the most carefully structured of these, but it is a single regional agency in a state which still relies primarily upon county and municipal planning or voluntary aggregation of those units. Florida, in addition to its state-level control of critical areas of ecological concern, has both state and substate-regional review under its Comprehensive Planning Act for projects which qualify as "developments of regional impact." The primary review is done by regional planning councils or regional water management districts, with ultimate authority resting with the state upon appeal.

Governmental Development

At least three states have created agencies with power to develop land for the public benefit. Thus the state itself may step in where private investment has been insufficient to meet the needs of the people.

The agency with the broadest powers is New York's Urban Development Corporation, formed in 1968. The corporation may take nearly any action which is open to a private developer, including construction of residences and commercial and industrial facilities. It has undertaken the development of three new towns in New York state. Its actions are financed through the sale of its bonds, but its properties are tax-exempt, and the state pays an amount equal to property taxes on those properties to political subdivisions to offset their loss of revenue.

Hawaii and Puerto Rico have created agencies with less extensive powers. Hawaii's Department of Land and Natural Resources may declare a shortage of residential land anywhere on the island of Oahu, the most densely populated of the islands, and it may purchase, develop, and resell lands to correct such a situation. The Puerto Rico Land Adminis-

tration has "land-banking" powers but not the power to actually construct housing or other buildings.

Proper enabling legislation could make similar powers available to counties or municipalities. Urban Renewal legislation already existing in most states, including Montana, North Dakota, and Wyoming, in fact gives municipalities all of the powers necessary to carry out development, but the exercise of those powers is limited to "blighted areas" requiring redevelopment. Amendment of such statutes to allow new development would be relatively simple, as would extension of such powers to county government where the county has planning responsibility for unincorporated areas. Additional legislation would, however, be needed to finance such development.

From the responses of areas which have undergone rapid population growth in the past, certain principles may be drawn as a guide to legislators. Because different conditions exist from area to area, some principles may be less applicable in the coal development states than in their state of origin. They are set forth not as an action program but as a guide to what has proved effective or inef-

fective for other governing bodies faced with similar problems.

The principles include the following among others:

Land Use Control and Planning - Enabling Acts

Where the state government does not desire to regulate land use itself, broad enabling legislation could be adopted to give municipalities and counties the ability to react to local problems of growth.

Enabling legislation could give counties the same zoning, planning and subdivision regulation powers as municipalities.

Incorporation of small communities or sparsely-settled areas could be allowed.

Enabling legislation could give county and municipal government all zoning and regulatory powers which are constitutionally permissible.

Urban Renewal legislation could be amended to provide equal powers to municipal government and county government, and to allow those powers to be exercised in development of new areas as well as restoration of blighted areas.

Land Use Control and Planning - State Regulation

Where rapid growth is widespread, planning and regulatory power may be more effectively exercised if centered above the local level.

If primary land use control is at the county or municipal level, the state could retain power to plan for use of all lands on which no county or municipal plan exists.

A state agency able to act as a developer can be effective in providing needed housing and facilities where private investment is insufficient.

The state could make planning aid, in the form of expertise rather than money, available to local governments.

The state, or local government under enabling acts, could require environmental impact statements for all developments of significant environmental impact.

Financing and Taxation

State limits on rates of taxation or rates of increase of taxation levied by county and municipal governments could be avoided or removed.

Mobile homes installed in a trailer park could be taxed as real property, rather than as vehicles.

Problems of growth may be alleviated if the state directly finances local facilities in advance of actual growth.

Local governments could be enabled to levy sales and income taxes within their own jurisdictions.

Building Codes

Building codes could state performance standards rather than particular methods of accomplishing a result.

Conclusion

The study is meant to provide a reference source for solving the problems of population growth that may be expected to arise in the states of Montana, North Dakota and Wyoming. It should also be of use in solving similar problems which may arise in other states of the Region or beyond the borders of the Region.

The six volumes contain practical tools for fashioning solutions to problems. These tools--existing statutes of the three states, solutions which have been attempted in other regions, and legislative principles applicable to these issues--are so arranged and indexed that they may be used as easily by readers unfamiliar

with statutory materials and planning concepts as by those who are expert in these fields. The study will thus be useful to governmental bodies at all levels and to private enterprise and individual citizens as well.

Decisions to be made in the near future will have long-range repercussions for the Region. Thus thorough and timely planning is vitally important. This study provides in-depth support for the work to be done.

RESPONSES OF AREAS OF PREVIOUS RAPID GROWTH

A. Introduction

Perhaps one of the best guides to effective response to rapid population growth may be found in the responses of regions which have faced the problem in the past. An initial survey was made by contacting the planning agencies or governing bodies of all counties in the United States which during the period 1960-1970 experienced a net in-migration equal to more than fifty percent of their initial population. Other areas of interest were identified through reference sources or through personal contact with state and federal agencies, through organizations such as the Urban Land Institute, the American Society of Planning Officials, and the National Association of County Officials, and through private enterprises interested in coal development. These "areas of interest" include areas which have adopted unusual responses to growth problems.

Those areas whose history or responses to growth seem most relevant to the problems facing communities in

the coal development areas have been selected for more detailed discussion at this point.

B. Areas of Interest: Problems and Responses

1. Mohave County, Arizona

Mohave County, located in northwest Arizona, borders Nevada across the Colorado River. It had the largest percent in-migration of any county in the nation during the period 1960-1970--212 percent. The 1970 population was 25,857. Growth has not been concentrated in any one area, but consists of scattered subdivisions, although these tend to be centered near Lake Havasu City (a new town which has attracted a mix of new industry, retirement homes, and tourism stimulated by relocation of London Bridge to the town), Kingman, and in a 40-mile strip of the Mohave Valley along the Colorado River. The main attraction has been the warm climate and water recreation opportunities combined with the low cost of land. Development in the Mohave Valley especially has been characterized by extensive use of mobile homes on inexpensive lots. Fifty-eight percent of the housing added in the county since 1970 has been mobile homes.

The nature of the population has not changed greatly as a result of the influx, which has been diversified in age groups and occupation. Whites have always been the predominant ethnic group, and most of the in-migrants have been white. There is a Spanish-speaking minority of approximately four percent and approximately 870 Indians.

The most significant problems encountered by the county have arisen from the dispersal of the population, which has added significantly to the cost of police and fire protection and road maintenance. The dispersed development has also not provided an adequate base for creating municipalities or special districts. Thus only Kingman and Lake Havasu City have sewage systems: the rest of the county is served by septic tanks, with attendant pollution problems where lots are small. Water service is fragmented, being provided by more than fifty private companies. Because Kingman is the only incorporated area, the county has had to provide most services ordinarily provided by municipalities. Arizona law prohibits a county from increasing its tax levy by more than 10 percent per year. Since the population has been increasing at a higher rate, it is almost impossible for the county to

provide adequate services. The problem has been compounded by the widespread use of mobile homes, which are taxed at the vehicle tax rate rather than the higher real property rate. An allied problem is that, although cities can demand dedication of land in subdivisions to public uses under Arizona law, counties cannot. Development has thus tended to be low in quality.

Mohave County has only begun to solve the problems arising from its development. County subdivision regulations are now being revised, and plans are being made to revise the zoning ordinance, in order to channel development into contiguous areas so that services will be more easily provided. However, there has been substantial resistance from developers.

2. Navajo Reservation, Arizona - New Mexico - Utah

There are two major coal mines on the Navajo Indian Reservation - the Black Mesa Mine and the Navajo Mine. In addition, two coal-related developments have been built on the Navajo Reservation. These are the Four Corners Power Plant, operated by the Arizona Public Service Company with coal from the adjacent Navajo Mine operated by Utah Inter-

national, Inc.; and the Navajo Generating Station operated by a consortium of utilities and the U.S. Bureau of Reclamation with coal from the Black Mesa Mine operated by Peabody Coal Company. Two coal gasification plants have also been proposed by El Paso Natural Gas Company and Western Gasification Company, with coal respectively from a mine operated by El Paso Natural Gas Company and from the Navajo Mine.

The Four Corners Power Plant was dedicated in 1963. It employs 305 persons, of whom 113 are Navajo. The Navajo Mine employs 474 persons, of whom 303 are Navajo. Figures for the total population impact of these two facilities are not available; but assuming a population increase of about 2.5 times the employment, the non-Navajo population increase on a permanent basis would be about 650 as a result of these two facilities.

Figures available with respect to the Navajo Generating Station give a better idea of the total population impact of such a project. This project, located near Page, Arizona, was begun in April 1971, with the first unit to become operational in the spring of 1976. Permanent employment will be approximately 300 persons. Another

225 employees will be required at the Black Mesa mine to meet the needs of the Station. However, construction employment peaked at approximately 2,500; and the population of Page increased at the same time by some 6,300 persons (population at the beginning of construction was 2,374; in April 1973 it was 8,664). During construction the total population increase was about 2.5 times the work force.

The town of Page is located off the Reservation and is presently governed by the Bureau of Reclamation as an administrative center for Glen Canyon Dam, although special legislation has been introduced in Congress to allow incorporation under Arizona law. The population is almost entirely non-Navajo. Permanent Bureau employees and established businesses occupy buildings constructed in the early 1960's in connection with the construction of Glen Canyon Dam. Current construction workers live primarily in a 700-space trailer park which will be closed upon completion of construction.

The Black Mesa mine presently employs some 250 persons, of whom 200 are Navajo. Most of this growth was absorbed by the town of Kayenta. There was overcrowding of schools, a

crisis in water supply and sewage disposal, a severe housing shortage, and overtaxing of fire, police and health facilities. There was no planning agency in operation at the time the mine opened, so reaction to these problems was haphazard. The Navajo Nation has subsequently organized an Office of Program Development which coordinates planning for the Reservation.

The two proposed coal gasification plants are expected to have population impacts similar to that of the Generating Station. Each one will require a maximum construction work force of about 3,500 persons, and together they will directly employ 1,500 persons permanently, with another 820 required to operate the mines.

It has been proposed in a study for El Paso Natural Gas Company and Western Gasification Company that permanent employees for these plants and mines and their supporting economies be housed in a new town to be constructed on the Reservation. The proposal would not, however, solve the problems arising from an influx of 7,000 construction workers. Mobile home housing appears to be almost the only available solution to this latter problem.

A new town development for permanent employees would be more easily constructed on the Reservation than in most localities because of the unified ownership of land and of water and because of the potential for special financing through the Bureau of Indian Affairs. However, a somewhat analogous situation may exist on large single holdings of coal land in private ownership, where the new town concept may be applicable to meet the needs of permanent employees of large projects located away from settled areas.

3. Petaluma, California

Petaluma is located approximately 40 miles north of San Francisco on U.S. Highway 101, within present-day commuting distance. In 1960 the population was about 14,000; in 1970 it was 24,870, and in May 1974 it was estimated by the State of California to be 32,000. In the years 1960 through 1970, 3,587 residential units were built, for an average of 326 new units per year. Construction requests increased sharply in 1970-71, until in late 1971 there were applications for 1,523 units before the City.

As a result of this influx, Petaluma's municipal facilities were overwhelmed. Schools resorted to double sessions; the sewage treatment plant was overloaded; water consumption at peak demand exceeded the supply furnished by contract with the Sonoma County Water Agency; and severe traffic circulation problems existed.

In response to these problems, the City Council in early 1971 imposed a temporary freeze on development and engaged consultants to revise the city's General Plan, Zoning Ordinance and Subdivision Ordinance. A policy was recommended to the Council and adopted in June 1971, under which construction of 2,500 dwelling units would be permitted over a period of five years at the rate of 500 per year. At least 10% of these would be required to be for low- and moderate-cost housing. This policy was further implemented by the adoption of an "Environmental Design Plan" intended to establish a green belt around the city, fill in vacant areas within the city, and preserve agricultural open space. In April 1972 the Council established housing allotments for 1972-73 and created a Residential Development Evaluation Board to advise the Council on allotments. The Evaluation Board was instructed to rate

proposals for development against three sets of criteria: conformity with the General Plan and Environmental Design Plan; availability of public facilities (water, sewer, drainage, fire protection, schools and streets); and quality of design. "Quality of design" was defined to include harmony with existing development, landscaping required, traffic efficiency, public and private open space, provision for footpaths and bicycle paths, and ability to meet the low- and moderate-cost housing requirement. The public facilities provisions are rated on a scale of zero to five points on each of the factors listed above; the quality of design provisions are rated on a scale of zero to ten points for each of the list of desired characteristics. A development proposal must accumulate at least 25 of a possible 30 points in the public facilities area and 50 of a possible 80 points in the design quality area before construction will be allowed to begin. (The Petaluma ordinance is reproduced in Volume Two of this study.)

The plan was attacked in court in the case Construction Industry Association of Sonoma County v. City of Petaluma, Civil No. C-73 663 LHB (April 26, 1974). In April 1973

the federal district court for the Northern District of California found the plan unconstitutional as an infringement upon individual constitutional rights to travel. The court also expressed concern that Petaluma was merely passing on to its neighbors a problem that was regional in scope, rather than attempting to solve a local problem. The case has been appealed, but Justice Douglas of the United States Supreme Court has granted a temporary stay of execution of the judgment of the district court, so that the Petaluma plan remains in effect up to the date of this study.

4. Aspen, Colorado and Pitkin County; and Summit County, Colorado

These two Colorado counties, and especially the town of Aspen, present an epitome of the environmental and social problems which may result from a boom which brings scattered growth and high incomes to mountain communities.

Aspen, Colorado, the county seat of Pitkin County, is one of the leading mountain resorts in North America. The town originated as a silver mining camp in the late 19th century; after 1900 the county population fell to less than

2,000 and stood at 2,381 in 1960. A rapid increase began after 1960. By 1970 the U.S. Census calculated the population of Aspen to be 6,185, local residents believed this estimate to be at least 2,000 below the actual population. The estimated 1973 population was between 11,000 and 14,000 with a winter peak of twice that. In conjunction with the increased numbers of people, there was a simultaneous change in the general nature of the population as the economy changed from a rural cattle-ranching basis to skiing and tourism. The adjusted gross income reported for taxes by county residents increased nearly ten-fold between 1969 and 1972; during the same period, the population increased approximately five to six-fold. The mean family income in Pitkin County in 1969 was \$14,500 while the mean family income for the State was \$10,900.

At the same time, the cost of living in Aspen has risen to become the highest in the country according to American Chamber of Commerce Researchers Association statistics for the third quarter, 1973. Law enforcement expenditures have increased by a factor of 16, from under \$25,000 in 1960 to nearly \$400,000 in 1973. Criminal cases in the district court increased by a factor of over

25 (from three in 1960 to 79 in 1973). Within the past several years there has been an out-migration of child-rearing families possibly pushed by housing costs since single family homes have been built at a rate only half the rate of population increase. Although total income of residents is growing and is above the state average, low-income jobs pay less than the state average: female clerical workers are paid only 74 percent of the state average, and nonconstruction workers only 64 percent. The county is thus becoming increasingly stratified by income as it becomes a more expensive place to live.

The city of Aspen itself is currently adopting zoning ordinances intended to preserve the present character of the town, with height limits on buildings, view easements for protection of scenic views, and low density zoning. It is also promoting municipal transport in town, with visitor parking outside the town.

The county's response to growth has been a recent radical down-zoning, with large areas zoned for one dwelling unit per ten acres. The down-zoning has resulted in filing of claims aggregating \$37 million being filled against the city for diminution of property values.

Summit County is a scenic alpine basin some 75 miles west of Denver. Once separated from the city by the Continental Divide, the opening of the Eisenhower Tunnel in 1973 placed the area within commuting distance to Denver. Over 75 percent of the county is within national forest, and Dillon Reservoir is a major summer recreational site. Good snow cover in the winter has made the area a major ski site.

Skiing is the major attraction of the area and has fueled a land boom in second-home sites. The pace of development is shown by the assessed property valuation of the county, which was less than \$6 million in 1960, over \$13 million in 1970, and had soared to over \$25 million in 1972. From 1960 to 1970, total employment increased by a factor of four, and school enrollment nearly doubled. Median income increased by 50 percent, raising the average family income to over \$10,500, nearly \$1,000 above the state average. The increase in the number of highly paid building trades workers has been responsible for much of the increase in family income and for the fact that Summit county leads the state in proportion of families with incomes over \$10,000 at 49.1

percent. During the same period, although the population increased only 28.6 percent, the number of housing units increased by 119 percent, an indication that the boom has in fact been mainly in second-home construction. But while condominiums and expensive single-family second homes have proliferated, there is a serious low-cost housing shortage for local residents.

The county is zoned under a 1963 master plan which is now out of date but unreplaced. There is blanket zoning by area for low, medium or high density residential construction; but this affords little real control in mountainous terrain, since a single parcel may contain a variety of slopes, soils and exposures. This has led to over-intense use of small areas within larger single parcels. Only a small part of the county is zoned for planned unit development (PUD), which would allow more precise control of individual parcels.

Public service and utility companies have been hard-pressed to keep pace with construction of homes. This problem is made especially severe by the fact that second-home owners require installation of full services but make only intermittent use of them.

The environmental impact of growth is especially evident in Summit County. Streams have been rechanneled and dammed, with few streams left unaltered. They are often clogged with sediment from construction areas. Solid waste disposal is expected to become a problem because Environmental Protection Agency regulations may prevent Forest Service lands from being used for landfill sites. Sewage disposal is an even more pressing problem. Although three public treatment plants exist in the valley, their capacity is exceeded by peak loads during peak recreation periods. There are also about 20 private treatment plants, but disposal by septic tank is common, with about 150 to 200 permits issued annually. A 1970 engineering report showed soil conditions throughout the county generally to be unfavorable for septic tank sewage disposal, with inadequate soil depths and high clay content impeding percolation. A recent report on Colorado mountain communities showed about one out of every four wells tested was contaminated by septic tank effluent, and Summit County is thought to be no exception. The valley is also highly susceptible to air pollution from automobile traffic, since there is a regular temperature

inversion over the valley during the winter months when ski-season traffic is heaviest.

Growth outside incorporated areas has overloaded county services, including fire and police protection. Between 1969 and 1971, crime increased over 500 percent and the seven-man Sheriff's Department has been unable to respond adequately. County fire protection is by a volunteer fire department; fire insurance premiums in unincorporated areas are set at the highest level permissible. Nevertheless, the county tax rate has increased over 2.5 times since 1960 because of demands for services.

There has been local citizen agitation for controls on growth, but although a new master plan was presented in 1971 it has not been adopted by the Commissioners.

5. Boulder, Colorado

The City of Boulder had grown from a city of some 10,000 in 1910 only to about 17,000 in 1950; but after 1950 the rate of population increase accelerated rapidly, so that the city had reached 35,000 by 1960 and almost 67,000 by 1970. The city's growth was fueled mainly from three sources: the University of Colorado; an IBM

manufacturing plant which located in the Boulder valley in the 1950's; and aerospace industrial development. The city at present occupies 25 percent of the Boulder Valley, and most of the remaining 75 percent is committed to industrial or residential uses.

In 1971 a referendum issue was placed on the city ballot proposing a population limit of 100,000 persons. While the proposal failed to pass, the following City Council-sponsored proposal was adopted:

The City Government, working with the County Government, shall take all steps necessary to hold the rate of growth in the Boulder Valley to a level substantially below that experienced in the 1960's and shall insure that the growth that does take place shall provide living qualities in keeping with the policies found in the Boulder Valley Comprehensive Plan.

A study making recommendations for action to implement the policy was submitted to the Council in November 1973, but no specific actions have yet been taken. In the meantime the city has been following a set of interim policies aimed at restraining the rate of growth. These include, among others: (1) analysis of development proposals in light of availability of city services, preservation of the character of neighborhood areas, keeping growth contiguous to present

All three of these arrangements--the interim growth policies, the comprehensive plan's 1990 limit, and the monopoly on services--are at present being challenged in the Colorado courts. In Robinson v. City of Boulder, Civil No. 72-2033-1, on May 20, 1974, the Colorado state District Court for the County of Boulder upheld the interim growth policies against charges that they were unconstitutionally vague, that they infringed the constitutional right to travel, and that they denied equal protection by classifying landowners who want to rezone differently from those who do not. However, the court held that the city was acting as a public utility and that when it had the capacity to provide services to an area it could not refuse to do so. The court also ruled that where a property was presently zoned to permit a use, the city could not delay that use until after 1990 by refusing to provide services because to do so would constitute a "taking" in violation of the Due Process Clause of both the United States and Colorado Constitutions. The court did not directly address the legality of the service-limiting agreements by which the city gained a monopoly over water

and sanitation services in its area. At present the court has taken a motion for new trial under consideration.

6. Boca Raton, Florida

Boca Raton is located on the east coast of southern Florida between Palm Beach and Fort Lauderdale. In 1965 the city had a population of 16,967. Since then the population has grown at a rate of over 15 percent per year, reaching 37,541 in 1972. Factors contributing to this growth included general growth of the local economy, expansion of Florida Atlantic University, and annexations. General economic growth in the city and surrounding Palm Beach County was broad-based and not attributable to any single factor. However, there was a significant shift in the nature of the economy. As would be expected, agricultural employment declined; all nonagricultural occupations showed substantial growth. But in Boca Raton itself the highest growth rate was in professional occupations, which showed a 760 percent increase. In absolute numbers, professional workers accounted for 28 percent of the total work force. Median income

increased substantially, from \$5,391 per household in 1960 to \$12,179 in 1970 (or \$9,290 in constant 1960 dollars).

The population makeup also shifted significantly during the decade between 1960 and 1970. The city became more predominantly white (93% in 1960, 97% in 1970), older (median 40 years in 1960, 42 in 1970), and there were fewer persons under twenty and more persons over 65 in 1970 than in 1960 (in 1970 23% of the population was over 65, compared to a Florida state urban average of 15%, and 28% was under 20, compared to the Florida urban average of 36%).

In a 1967 comprehensive plan, population and housing projections were made, and it was estimated that under the then-current zoning regulations the city had a population capacity of 131,900 persons, housed in the capacity limit of 57,800 dwelling units. Some annexations and a downzoning took effect after that estimate, but a 1972 revised projection still showed a capacity of 112,567 persons and 51,102 dwelling units.

On November 7, 1972, an initiative measure was adopted by the voters of the city to amend the city

charter, putting a population limit on the city by limiting housing. Under this measure there can be no more than 40,000 dwelling units within the city.

The charter amendment was a "bare bones" measure, with no guidance for implementation. To implement the population limit the city Planning Department was directed to inventory existing and potential dwellings and make recommendations to the City Council and the Planning and Zoning Board. The inventory found about 17,000 units existing as of the end of January 1973, with a potential of approximately 62,000 total units. An implementation plan was submitted calling for a general reduction in density of about 15 percent, to a present potential total of 44,000 units, which will be further reduced by land set aside for parks and municipal services.

The inevitable court challenges followed. To better meet the attacks, the city has built around the charter amendment a detailed outwork of zoning and community services ordinances in an attempt to meet the concerns expressed by courts in other growth-limitation cases (especially, that involving the town of Ramapo, New York, discussed below). The city is presently defending three

cases, all in the early stages of litigation. The outcome is uncertain.

7. Brevard, Seminole, and Volusia Counties, Florida.

Brevard County is located on the east cost of Florida and is the site of the Cape Kennedy space facility. In the early 1950's the county had an agricultural economy, with a population of 23,650 residents in 1950. In 1960 the population was 111,435, with the increase resulting primarily from development around the Cape Canaveral Air Force Station. In that year the space program was given a much higher national priority, and by 1966 the population had doubled again, to an estimated 223,600, and was adding 1,250 citizens a month. At that time the projected 1970 population was 291,000, and the 1980 population 410,000. The county and municipal governments were operating without a planning department or other agency to attempt to promote orderly growth. The only planning tool in use was a zoning ordinance hopelessly beleaguered by demands for housing and commercial services. In the absence of a comprehensive land use plan, it became impossible to adhere to the existing zoning patterns.

In 1966 a county planning department was established, but most of its efforts had to go to solving problems which already existed. However, the first steps toward comprehensive planning were taken.

In 1969 the boom came to an abrupt halt. The population according to the 1970 census was 230,006, an actual decline in population. At this time the county began a serious planning program. It implemented a land use plan designed to reduce density, especially along the ocean front. Previously the county had been allowing developers to provide water and sewage services and keep title to the facilities, but it now began to demand that title be dedicated to the county. Updating of zoning ordinances was begun.

Up to 1966, the population of the county had been somewhat transient, although at a professional level (engineers and technical workers). In 1971 the population once again began to increase rapidly, but the influx is now of more permanent residents, although the majority of the working population still consists of NASA employees. Projections are that the population will double by about 1995. The present efforts of the county in planning for growth are

going to preservation of environmental values and open space.

Volusia County is located on the central east coast of Florida and is the site of Daytona Beach. Most of the population is concentrated in the coastal area, but there is a smaller urban concentration in the western part of the county around the county seat, DeLand. The population of the county has increased steadily since World War II, but the greatest increase came during the 1950's when there was a 68.8 percent increase. During the 1960's there was an increase of 35.2 percent. The rate of increase accelerated during 1971-1973, only to slow again with the advent of the energy shortage. In-migration has been almost entirely composed of whites, while there has been an outflow of nonwhite residents. Unlike many resort areas of Florida, there has been no marked shift to an older population.

The economy of the county is and for many years has been primarily based on tourism. The medium income per family is below the state figure, and relatively low incomes appear to be the rule throughout the population: for example, in 1970 Volusia County had 13.8 percent of its families below poverty level, and 13.1 percent above an

income of \$14,000, as compared to Brevard County's 8.2 percent below the poverty level and 26.9 percent above \$15,000.

Problems resulting from growth have primarily been those of providing utilities and other public services. There have been capacity shortages in existing water and sewer facilities, and growth in the unincorporated areas has created a need for services beyond municipal boundaries. Municipalities have been reluctant to provide these services, and the county has been unable to do so within its ability to tax. There has also been a problem with sewage treatment in the unincorporated areas--not the usual problem of lack of treatment facilities, but a problem of proliferation of small package treatment plants which may be purchased ready-made and easily installed to serve small areas. The existence of these plants has allowed residential development to cut free from the municipalities and thus escape other kinds of regulation.

The reaction of the county and the municipalities has primarily been to guide rather than prohibit growth. Long range water supplies are being protected by a county ordinance regulating development in the recharge area of

the Floridan Aquifer, the source of most county water. Special tax districts are being established to provide revenue for services in the unincorporated areas. It has been suggested that package sewage treatment plants should be prohibited and a tie-in to a municipal plant required for all developments. While this has not yet been done, the South Peninsula Zoning Commission in the county has adopted an ordinance which sets minimum package plant size at 50,000 gallons per day. The ordinance has forced some developers to construct joint plants.

Some of the municipalities have adopted development fee ordinances requiring developers to pay a per-unit fee for use of city services. This shifts a part of the capital cost of development from the city to the developers, who can pass it along to the consumer, thus trading off lower taxes for higher initial cost for housing or rent.

The main mechanism for growth control has been to condition approval of development upon the developer's agreement to provide public facilities. For large developments, this includes dedication of schools and recreational facilities. Within Planned Unit Development zones the county can also require dedication of sites for other

public facilities such as fire stations and emergency rescue centers.

Seminole County, although not one of Florida's highest growth areas in the past, has experienced a recent surge of development connected with the construction of Disney World. The problems encountered by the county do not differ greatly from those described for Volusia County. However, Seminole County is moving toward a more comprehensive system of growth control than either of the other Florida counties discussed above. A recent county ordinance requires that each incorporated area adopt a comprehensive plan, and the county does comprehensive planning for the unincorporated areas. Presently the County Board negotiates individually with each developer for dedication of roads, schools, and other public facilities. This is an attempt to overcome the lag between the time property comes on the tax rolls and the time tax revenues actually become available to the county. The county expects to move beyond the present system, however, to a system of impact fees patterned on that first used by Loudoun County, Virginia (see Sec. 11, below), whereby a developer makes a cash payment to local government to

offset the public costs arising from his development.

In order to withstand expected court tests, it is planned to administer the fees in accordance with a comprehensive plan for capital improvements, similar to that used in Ramapo, New York (see Sec. 8, below).

8. Ramapo, New York

The town of Ramapo lies approximately 25 miles north of midtown Manhattan in Rockland County, New York, a suburban and rural area now accessible from the city by a thruway crossing the Hudson River. Population increased from 35,000 in 1960 to 76,700 in 1970, while the state as a whole experienced only an 8.7 percent increase.

In response to this growth, the Town adopted in 1966 a master plan detailing the complete development of the entire town, including all undeveloped areas. To implement the plan a six-year budget was adopted providing for the installation of certain facilities, and a capital program was drafted providing for implementation of the rest of the plan over the succeeding twelve years, at the end of which time the town would be completely developed. The finishing touch in the Ramapo plan for growth regulation

was the adoption in 1969 of zoning ordinance amendments (reproduced in Volume Two of this study) requiring a special permit for any "residential development use," which is defined as "erection or construction of dwellings on any vacant plots, lots or parcels of land." Issuance of a permit depends upon whether certain public facilities are then available to the development under the capital improvement plan. The availability of each of five kinds of facilities is rated on a scale of from one to five, and a development must accumulate 15 points to qualify for a permit. The specified facilities are: sewers; drainage; parks or recreation areas, including schools; improved roads; and fire stations. Thus, the eventual use of every parcel of land is presently known, with development postponed to a future date which is reasonably predictable under the capital budget.

The Ramapo zoning ordinance was attacked in court, and the New York Supreme Court, Special Term, for Rockland County declared it unconstitutional; but the New York Court of Appeals, the State's highest court, reversed the lower court in what has become one of the most-discussed zoning cases in the nation, Golden v. Planning Board of the Town

of Ramapo, 30 N.Y. 2d 359, 285 N.E. 2d 291, 334 N.Y.S. 2d 188 (1972). The court held that while the town was not authorized by statute to absolutely prohibit subdivision, it had not done so, but had merely decided not to approve subdivisions before the Town had provided facilities to accommodate them. The ordinance was held not to amount to an unreasonable limitation on the use of property, for limits on property uses were merely "temporary" even though they might last for 18 years; and the plan was held not to unlawfully exclude outsiders, but merely to provide for their orderly absorption. The court concluded:

In sum, where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires, there is a rational basis for "phased growth" and hence, the challenged ordinance is not violative of the Federal and State Constitutions. 285 N.E. 2d at 304-305.

With the ordinance in effect, residential building permits in Ramapo have fallen to about 300-350 per year, according to recent field research.

9. Langdon, North Dakota, and Cavalier and Pembina Counties.

In early 1970 Congress authorized construction of anti-ballistic missile sites in Cavalier and Pembina Counties in north eastern North Dakota. With only a few months' advance notice, construction workers began pouring into the area. Construction began in May, 1970, and during that summer about 1,500 workers were employed. This number dropped to about 1,000 over the winter, rose to a peak near 3,500 in the summer of 1971, fell again to 2,200 over that winter, and rose to the ultimate peak of some 3,700 workers in the summer of 1972, after which the work force slowly declined to the present time, when little construction activity is continuing.

Construction took place at two main sites and four small remote sites. Workers were spread over a six-county area. The main population impacts, however, were on the towns of Langdon and Cavalier. As many as 1/3 of the work-force may have been composed of local-area residents. Nevertheless, the peak work force of 3,700 involved a total temporary population increase of approximately 8,000, a heavy burden in a rural area. For comparison, Langdon had a 1970 population of 2,100, Cavalier 1,381.

The first problem to arise was housing. There was never a large surplus even initially, and vacant farms and basement apartments were soon rented. Houses renting at the \$50 level suddenly could command \$200-250 per month. Most of the housing used to meet the demand was, of necessity, mobile homes and campers.

Although schools became crowded, the full impact was not felt there immediately because construction was at its peak only during the summer months, and because at first many non-resident construction workers did not bring families with them. But the Langdon school system eventually increased from 800 to 1500 students, and at times revenues were inadequate to pay salaries and bus transportation costs.

Other problems which quickly arose were inadequacy of water supply systems and sewer systems, inadequate fire and police protection, and inability of farmers to hire needed help because of wage competition from construction jobs. Roads became congested and under-maintained, and there was an increase in minor crime, although none noticeable in serious crimes.

Because the situation had developed so rapidly, there was a general reluctance on the part of local citizens to invest money in solutions to what they thought might be only transitory problems. This was true of both public and private investment: private services to accommodate the needs of newcomers developed only slowly; and increases in the mill levy for schools were rejected five times.

Federal money proved to be the solution to most of the area's problems. Congress passed the Young-Mansfield Bill appropriating up to \$17 million to alleviate the effects of the ABM complex construction. The money was made available through existing federal programs for aid to federally-impacted areas. Federal programs also provided some other funds for such things as schools, sewage treatment and law enforcement assistance.

Although the tide of construction workers has drained away, the area population has not fallen back to its former level. About 1600 persons are permanently employed in connection with the ABM complexes, which means a total population impact of about 4,500 persons. The population of Langdon has leveled off at 3,900 according to a 1973 special census (believed by some local officials to be low by over 1,000

persons). This is up from the 1970 figure of 2,100. Perhaps because less federal aid was provided than was asked for, and because of local reluctance to raise taxes, public facilities now existing are not greatly in excess of needs--there are no white elephants.

The financial aspects of the population boom were also positive for the area. Schools, health services, and public facilities are improved, but taxes have not risen (this of course is largely the result of federal aid); some 25 new businesses were established and continue to prosper; retail sales in Langdon rose from just over \$19 million in 1972 to over \$110 million in 1973.

The presence of federal assistance makes the solution to the area's problems largely irrelevant to other regions; but the amount of federal assistance used to meet various public needs provides an interesting index to the problems which arose. As of March 31, 1974, the following amounts had been expended:

<u>PROJECT DESCRIPTIONS</u>	<u>SAFEGUARD FUNDS</u>	<u>OTHER FED. AGENCY FUNDS</u>	<u>LOCAL FUNDS</u>
School construction			
Elementary	2,057,566		
High School	162,324		
		(HEW)	
School O&M	154,623	3,653,507	
Utilities (Mostly water & sewer)	1,174,186	EPA 92,000 FHA 360,000	807,000
Roads & Streets	2,605,250		
Recreation	141,685		
Sanitarian	28,302		
Area Resource Development Agent	74,799		
Law Enforcement	204,407	LEAA 227,522	
Comp. Planning	98,815		
Fire Protection (Civ. Def.)	168,962		
Hospitals	1,129,686	PHS 19,593	97,200
Airport Improvement	FAA 22,355		
Public Health Services (Health Nurses)	25,206		
 TOTALS	 8 Million, Plus	 4 Million, Plus	 904,200

Total requests from local and state were over \$18,000,000.

It is interesting to note that of roughly \$13 million spent, nearly \$6 million went for schools or school operating expenses. The next largest categories were roads and utilities, requiring around \$2.5 million dollars each. These expenditures met the increased needs from an influx of some 3700 workers into a rural area. While the situations are

not exactly comparable, needs of at least the same order of magnitude might be expected to arise in connection with construction of a coal gasification plant of 250 million cubic-feet-per-day capacity or an electric generating plant of 1,200 megawatt output, construction of which would require roughly the same number of workers.

10. Williston, North Dakota

Williston, in the northwest corner of North Dakota, was the site of a brief oil boom in the late 1950's. The population increased from 7,000 to 12,000 in a period of two years. The city encountered surprisingly few problems, the major ones being a housing shortage, inundation of the schools with new pupils for a time and increased road maintenance from heavy truck traffic. Demand for schools and public facilities was met partly with state aid from an oil production tax. This state tax was in large part returned to the communities affected by the oil boom.

Although the boom might have been expected to be merely temporary, in fact the population of Williston did not decline greatly even after oil exploration ceased. This may be partly accounted for by an influx of farmers from the

countryside into the town itself, but no full explanation is apparent.

Aside from the state oil production tax, only traditional growth control and financing methods were used. Those who were in local office at the time felt that those measures had proved to be successful in their case.

11. Loudoun County, Virginia

Loudoun County lies on the western fringe of the metropolitan Washington D.C. area. Dulles Airport, on the approximate present dividing line between suburban and rural areas, is located on Loudoun County's eastern border. The county itself is still semi-rural, but between 1960 and 1970 the population increased by over 50 percent, from 24,549 to 37,150. The increase was concentrated primarily in two planned development communities, many of the residents of which still work in or near Washington D.C. With these two developments already in progress, one of the nation's largest developers applied for rezoning for a new 13,000-resident planned community. The application was denied in early 1971. The developer took the case to the courts, but in March 1972 the state Circuit Court sustained the zoning

board's action, holding that a county could deny development because of adverse economic impact. As a result of this court case, in June 1972 the county Board of Supervisors formalized their position by adopting Article 12 of the Loudoun County Zoning Ordinance (reproduced in Volume Two of this study.)

Article 12 has been called a "pay-as-you-grow" plan. Under it, the developer is required to pay the "net public cost" of his development. "Public cost" is the capital cost to the County to supply necessary public services under a particular zoning. "Net public cost" is the difference between the cost under the proposed zoning and that if development occurred under existing zoning (which in most cases would preclude development of significant density). This cost may be paid by direct construction of the facilities required, except schools, for which developers have in the past been charged a fee which goes into the school improvement fund, with construction handled by the county. Some specific items to be included in calculating net public cost are enumerated in the ordinance. These include extension or enlargement of arterial roads, sanitary sewers, water lines, storm sewers, other utilities, and

street lights; and for residential developments, parks and recreational facilities, maintained at the expense of the residents or the developer, and schools. However, "net public cost" is not limited to the cost of the listed items.

It is noteworthy that the county is not required to approve any proposal for which the developer agrees to stand these costs, and in fact no rezoning has been approved under this ordinance. A 21-month moratorium on development preceded the adoption of the ordinance, so county development has been static for nearly four years.

The Loudoun County ordinance is in fact only an unusually extensive form of a kind of ordinance in wide-spread use--the subdivision exaction ordinance. Typically such an ordinance requires the developer to provide parks or schools if they are uniquely attributable to the development. Typically also, the exaction is done through means of the subdivision ordinance. The reason it was done under the zoning ordinance here is that Virginia legislation does not specifically allow a county subdivision ordinance to require developers to dedicate school or park sites or make a cash contribution in their stead. However, Virginia zoning legislation gives counties great flexibility in de-

veloping zoning criteria. The requirements were therefore placed under that ordinance.

The county planning commission is presently considering proposing a change from the present system of development control to a capital-budget plan similar to that adopted in Ramapo, New York.

C. Problems Encountered

The brief descriptions and histories of areas of interest, set forth above, show that not all areas experienced the same problems. Although every area of rapid population growth had in common with others a certain number of problems, seemingly the only universal problem was that of providing sufficient housing and the associated utilities. For example, a rapid but temporary influx of construction workers without families results in little impact on the school system. In some areas adequate water supplies are readily available for a large population increase. In other areas there is an existing transportation network serving an external demand so large that the local increase will not be large in proportion.

Some differences are accounted for by differences in the nature of the population coming into the area. Temporary residents such as construction workers impose different demands for services than do permanent residents, and there may be a reluctance to build facilities having high capital cost, such as sewage treatment plants, to provide for a transient population. Second-home owners and retired persons represent other groups which impose different kinds of demands upon the community. Other differences in kinds of problems resulting from population growth are ascribable to differences in topography and climate.

There was, however, a core of common problems which may be expected to occur in some degree in any area of rapid population growth.

A summary of those problems is as follows:

1. Housing.

Housing, as noted above, is perhaps the only universal problem encountered. The nature of the housing demand varies from area to area. In those areas in which the population influx is made up of wage earners who expect to be permanent residents, there will be a demand for permanent

housing. The main problems which arise are those of land use control and housing price increases.

A second kind of population influx is that of construction workers into an area of industrial development. This influx consists of relatively temporary residents (from a few weeks to several years) who are often unaccompanied by families. Unless they are to be replaced by an equal number of permanent residents, it would be wasteful to build permanent housing for these workers. Instead of demand for permanent housing, rents skyrocket and mobile home courts proliferate.

A third type of influx may be designated as "specialized permanent resident." This term includes retirees, who are most often permanent settlers but are not wage-earners and have different demands for public facilities, and second-home owners, who may be "permanent" but not full-time residents.

The areas under study are most likely to be represented by a population influx made up of a combination of the first two types--construction workers and permanent wage-earners. Thus, techniques adapted to control typical subdivision growth will be relevant, but specialized techniques adapted

to minimizing the adverse effects of temporary population increases are also needed. (For current land use control and planning statutes of Montana, North Dakota and Wyoming, see Sec. ID-1 of Volumes Four, Five, and Six of this study. Statutes embodying other approaches to this problem are collected in Volume Two. More specialized techniques for temporary-growth areas include the use of package sewage treatment plants, which may be moved out when the population decreases, and mobile home control such as that of the Vermont statute in Volume Two).

2. Utilities.

Consumer demand for sanitary sewers, water supply and power is the same in kind whether the population increase be permanent or temporary (unlike housing, where temporary residents may wish to avoid purchasing permanent quarters); but the fact that facilities have a high capital cost which can be amortized over a long period of time makes the situation ultimately analogous to that for housing: i.e., it may be uneconomical to provide full service for temporary residents. A second problem, is that, because of restrictions on local-government taxation or borrowing, it may be

impossible to increase the rate of supply of utilities as fast as the rate of population increase. This was the experience of Mohave County, Arizona, for example. In some areas, water supply or the high cost of power may impose absolute limits on the population at least temporarily. (One means for providing utilities is the special district. For statutes governing the creation of such districts, see Sec. ID-2 of Volumes Four, Five and Six.)

3. Services.

Fire protection, police and health care may become inadequate. Fire and police protection are especially likely to be inadequate if growth occurs outside incorporated areas, as is shown by the experiences of Mohave County, Arizona, and Summit County, Colorado. However, financing these services may be less of a problem than financing utilities because for the most part these involve immediate operating costs rather than capital costs. Most of the cost thus may be paid from tax revenues, which are more readily adjustable than is financing by long-term bond issues. Hospitals and fire stations of course are exceptions to this statement. (One way of providing fire pro-

tection in unincorporated areas, for example, is set forth in the Montana statute at Sec. IB-3c of Volume Four.)

4. Schools.

Demand for schools is normally somewhat greater per capita with a permanent population increase than if the increase is temporary construction workers. For example, construction worker families on proposed coal gasification plants on the Navajo Reservation near Farmington, New Mexico, are expected to average 2.4 persons, as compared to approximately 3.0 persons for permanent residents of the region. On the other hand, schools represent a high capital cost, and temporary increases in school size may be especially burdensome if financed in the traditional manner by issuing long-term municipal bonds.

A Colorado study has shown that schools are by far the biggest expense for local governments, accounting for at least 40 percent of per capita expenditures. This was true in rapid growth counties, in those with stable populations and in those with declining populations. This is borne out by the experience of Langdon, North Dakota, where nearly one-half of federal aid used for all purposes was needed

for school construction and operating expenses. Thus the cost of schools is likely to be the major dollar burden imposed by rapid population growth. The interrelationship of problems arising from growth is shown by the fact that some areas have encountered operational as well as financial problems with schools simply because a local shortage of housing makes it difficult to recruit teachers. (One means by which school construction may be financed in rapid growth areas is illustrated by the Wyoming statute (21.1-245, 21.1-250) which authorizes school districts affected by rapid growth to obtain loans from the State Farm Loan Board. See Volume Three, pages 265 and 284.)

5. Transportation.

The most immediate transportation problems for most localities are congestion and the increased cost of road maintenance. If the influx is temporary, these may be the only transportation problems. If growth is permanent, the transportation network will of course have to expand in all aspects, including road, rail and air. This is alleviated in some instances by the presence of over-capacity in existing facilities which do business outside the immediate

area. This is true of railroads in parts of the coal-development regions.

6. Environment.

In a population boom, regulation lags behind the need for it. This, plus reluctance to construct expensive treatment facilities to accommodate temporary population increases, has led in the past to pollution of air and water and loss of scenic attractions. Examples include smog and groundwater pollution in Summit County, Colorado, interference with scenic views in Aspen, Colorado, and overdevelopment of Florida beachfronts. Federal legislation has ameliorated the problem in the first two respects, if not solved it; but preservation of land is still in the hands of state and local government. (For environmental zoning as a means of solving these problems, see the Montana Utilities Siting Act at Sec. IE of Volume Four, and the Maine Siting Act in Volume Two. The Montana Strip Mining and Reclamation Act, at Sec. IE of Volume Four, is another example of environmental legislation.)

7. Crime.

The experience of areas of previous rapid growth indicates that crime rates are as likely to increase in areas where the influx consists of relatively high income families as in areas where it consists of construction workers or other temporary residents. However, where population density remains low (as, for example, in Mohave County, Arizona), there is likely to be no noticeable increase in the rate of crime even though population increases substantially.

8. Intergovernmental Barriers.

In most states, legislative power is solely in the hands of the state government unless delegated. (The constitutions of a few states grant powers directly to municipalities, but these are not material here.) County or municipal governments are thus able to solve problems only within the range of powers which the state allows them to exercise. The range varies greatly from state to state. For example, a state statute may set forth in detail what facilities a city may require a developer to dedicate as a prerequisite to permission to develop. The city is then limited in the courses of action it may pursue in solving

its growth problems. But state reaction to the problem may come slowly, if at all, especially if land use control is not customarily exercised by the state. The net result is that no one solves the problem. Revenue-raising mechanisms available to local governments may also be inadequate to meet their needs in a rapid growth situation or a temporary growth situation if the state has limited the rate at which a locality may increase its taxes or if it has not delegated power to levy certain kinds of taxes. The property tax has been the mainstay of local governments, but it may be inadequate because population growth often does not lead to increased assessed value and collection of taxes until several years have elapsed. Rapidly growing communities may also have problems in providing facilities because the state imposes a limit on their debt capacity. The effect is much the same as a ceiling on tax rates.

These difficulties are illustrated by the experiences of Mohave County, Arizona, and Summit County, Colorado. The problem is essentially that local government is not master in its own house. If the real master, the state, has neither taken direct control nor delegated powers sufficient to cope with the situation, then the locality must

simply endure. (For one solution to some of these problems, see the Colorado enabling act in Volume Two, giving counties and municipalities broad land-use planning powers.)

D. Government Reactions

Local governments faced with rapid population growth have reacted in various ways and with varying degrees of success. The following analysis discusses the means by which other areas have attempted to solve the problems of rapid growth.

1. Traditional Approaches.

Since the 1920's the standard method for directing growth at the local level has been zoning by use--for example, some land may be used only for residences, other land for commercial purposes. This is typically coupled with revenue raising by means of a property tax, with large capital improvements financed by long-term bonds.

Use zoning in itself has proved to be ill-adapted to rapid growth situations. The main difficulties that appear in a growth situation are that zoning is either not

applied extensively enough in the beginning or is applied in the wrong places (since growth may not follow existing jurisdictional lines), or that under population pressure the zoning structure collapses in a flood of rezonings. Rigid zoning inhibits growth; permissive rezoning abdicates control. In addition, low-density local zoning which inhibits growth may be viewed by a court as a mere exclusionary device by which the locality hopes to avoid carrying its share of population growth in the region as a whole.

Traditional means of financing growth should be viewed as separable from traditional zoning. As noted above, these have been the property tax and long term bonds. It is important to recognize that in some rapid growth situations these have proved adequate to meet the needs of the community. However, this can probably be expected only if the population influx is permanent and state law does not restrict the rate at which local governments may increase their tax levy. In any case, advance financing by the property tax requires taxing a relatively small value base to pay for facilities which will be of use only for the later larger tax base. In addition, in a temporary boom situation local citizens will

be reluctant to issue bonds to pay for facilities which might not be used for more than a few years. And it is sometimes difficult in the beginning to tell a temporary boom from a permanent one. The Williston, North Dakota oil boom of the 1950's, for example, could have been expected to be temporary. Thus there might reasonably have been reluctance to finance expansion by long-term municipal debt. Ultimately, part of the financing was done by means of an oil production tax levied by the state. But the boom turned out to be permanent: the population of Williston has remained stable even though the oil field workers have gone. Thus the traditional finance methods would have been satisfactory in themselves.

2. Special Tax Concepts.

The Williston experience discussed above represents one means by which the state may aid local government in meeting problems of growth. That is by taxing the source of the growth and returning the funds to the locality. The North Dakota oil production tax and the mineral severance tax now being levied on coal in Wyoming and Montana are examples of this. The argument favoring this kind of tax

is that income to the locality is directly related to private income from the source which is attracting growth, and in most cases this can be expected to be roughly proportional to the growth attracted. The growth thus tends to pay for itself. However, the solution is difficult to apply in many situations. For example, a temporary influx of construction workers on a coal gasification plant offers no easily-taxed revenue source, since income from the plant does not begin until the population has begun to decline.

The state of Alaska has taken a different approach with respect to growth resulting from construction of the Trans-Alaska Pipeline. Traditionally, property tax rates have been set by local government and the revenues collected and used locally. However, Alaska has levied a property tax at the state level on oil company property and restricted the rate at which municipalities may tax such properties. At the same time, the state has authorized subsidies to ease the burden of increased demand for public services in communities where growth is caused by the Pipeline. It is obvious that the state property tax could be used to provide the subsidy, although no such connection is made in the Alaska statute. The advantage of state participation is

that the locality can plan for future growth without fear that it will be saddled with an overwhelming debt for unneeded facilities if the expected population increase does not materialize. (The Alaska statutes are reproduced in Volume Two.)

3. Timed Growth.

The timed growth plan for directing the growth of a locality was developed in Ramapo, New York, in 1972 and has since been adopted by a number of other localities around the country. The plan as developed in Ramapo applies only to residential uses, but it could equally well be adapted to any land use. The Ramapo plan is outlined above under the description of that area, and the ordinance itself is reproduced in Volume Two of this report. The basic plan is that all available land is zoned in advance for its final use. Actual development of any given parcel is allowed only after certain municipal facilities are in place, and the facilities are to be constructed by the city in accordance with a specified time schedule. Thus the ultimate use and approximate date of development of every parcel of land are known from the beginning. A

significant aspect of the plan is that it has been sustained as constitutional by one of the most influential state courts in the nation, the Court of Appeals of the State of New York. The voluminous litigation that has arisen whenever a new means of growth control appears serves to emphasize the significance of this fact.

Since the 1920's courts have scrutinized three characteristics of zoning ordinances: power to zone (i.e. whether the state has delegated the locality power to do that which it seeks to do); the purpose of zoning; and the means embodied in the ordinance.

Whether there is power to zone of course depends on the individual state's enabling legislation, or, in a few states--e.g. Ohio and California--on constitutional grants of home-rule powers of cities. Court decisions of one state thus may be inapplicable in another. The same may also be true of the purposes for which zoning is proper, if the state statute limits such purposes, as did the New York legislation under which the Ramapo ordinance existed. But many courts have also set a constitutional limit upon zoning purposes--namely, that zoning cannot be motivated by an exclusionary end. Mere desire to preserve existing

characteristics of the locality is not sufficient. However, the Court of Appeals held that the Ramapo ordinance was not aimed at exclusion, but at population assimilation, and the plan was therefore sustained. The court did not, however, consider the argument that has been advanced in other cases, that growth limitation is an unconstitutional restriction of the individual citizen's right to travel (see the discussion under "Population Limits" at Section 5 below).

The Court of Appeals also held that the plan was not so burdensome as to constitute a violation of due process by amounting to a taking of property without compensation. There is no firm rule as to what does or does not constitute a taking without compensation. The Court of Appeals in this case held that there was some rational basis for imposing time restrictions on growth; that the restrictions on the use of property, though they might last for as long as 18 years, were "temporary" rather than permanent; and that the owner was left with sufficient use of his property that compensation was not due. It is of course a basic tenet of zoning law that mere diminution in value of property does not constitute a taking.

In light of the above considerations, it cannot be assumed that the Ramapo plan would automatically be approved by a court in every area in which it might be adopted. Under a different set of circumstances, a court could hold that a timed growth plan was not reasonably related to community needs, or that the purpose for which the ordinance was adopted was improper. However, the New York case would at least be persuasive that the plan is a constitutional means to achieve a proper purpose.

For the coal regions, a more serious question than the constitutionality of the plan is its relevance. First, the Town of Ramapo, like other towns which have adopted similar plans, is a suburb of a major metropolitan area. It serves in large part as a bedroom community for the inner city. The main desire of at least many of its inhabitants is to escape from congestion and the problems of growth, by which they are surrounded on all sides. Thus there is little internal pressure favoring growth, and much against it. In contrast, the coal areas have an abundance of open space and may be more inclined to trade some of it for the money that comes with growth. Second, for Ramapo and towns similarly situated, the potential for growth is more or less permanent,

and the kind of growth is perfectly predictable. Ramapo can look ahead 18 years and know that most of its land is going to be used for residences whenever the zoning plan allows it. There is much more uncertainty in a coal development area. What today seems inevitably destined to be cow pasture may tomorrow be trailer courts, and revert to rangeland in five more years. A timed growth plan is inherently inflexible. If there is not planning for all lands, the plan is useless because growth will merely escape to the unregulated areas; and in the coal development areas if there is total planning, the plan is probably wrong.

4. Dedicated Services and Impact Fees.

These are related mechanisms, both aimed at transferring the cost of certain services from the public at large to some other source, which ultimately turns out to be the user.

In effect, these mechanisms represent an alternative means of financing public facilities. Instead of being paid for by money raised by a bond issue, which is then paid off from tax revenues, the facility is paid for out

of the money received for houses or commercial buildings in the development, and taxes are then lower in ensuing years by the amount which would have been required to pay off the equivalent bonded indebtedness. These mechanisms may thus be an attractive alternative in areas which have a limited debt capacity but have broad zoning powers or subdivision regulation powers.

These devices are entirely different from the Ramapo plan, under which the cost of services is still borne by the municipality and is merely postponed to a more convenient date. Here, the theory is to make the developer pay some or all of the capital cost of public utilities and services for his development. Most, if not all, of this cost will of course be passed on to the resident through higher prices for housing.

The earliest form of dedication requirement was the subdivision ordinance under which a developer could be required to dedicate streets, public schools or parks if the need for the facilities was uniquely attributable to his development. Such subdivision ordinances are now widespread. There is no essential difference between those ordinances and the more advanced form, represented best

by the Loudoun County, Virginia, zoning ordinance, requiring the developer to dedicate all the necessary facilities or pay the entire "net public cost" of his development directly as a fee.

These mechanisms seem more adaptable to use in the coal development areas than does the Ramapo plan, although still not perfectly so. They are more flexible, easily adaptable to changing circumstances. Most importantly, they relieve the municipality of the initial capital cost of facilities.

On the other hand, this approach almost certainly will increase the cost of housing to the resident. Especially in a temporary-growth situation this could drive consumers to a less expensive alternative. The alternative can ordinarily be expected to be mobile homes. This merely throws the cost back on the local government unless mobile home developments are also subject to dedicated service or impact fee requirements. Such developments do impose the same costs on the municipality, so residents should be required to pay them if residents of other developments do so.

Impact fee ordinances in their most-developed form have not been subjected to a court test, although the decision of the Circuit Court of Loudoun County, Virginia, upon which that ordinance was based, is probably applicable to ordinances under the enabling acts of most states.

The earlier form of subdivision exaction of land for streets has long been upheld, and exaction of schools and parks has been upheld in the courts of several states. At least one court has rejected the right of the municipality to exact a school site. The courts of some states have also upheld exactions of money in lieu of land; but others have found such a practice unlawful where not specifically authorized by enabling legislation, and one court has overturned legislation allowing such an exaction because the use of the money was not limited to benefiting the land developed. In view of these mixed precedents, the reception which the courts of other states may accord to dedication requirements or impact fees cannot be predicted with any certainty.

If state law permits, such an exaction or fee ordinance would be more effective if passed under the power to regulate subdivisions rather than under the zoning power, since

in that way the exactions would not be tied to a rezoning application, but could be levied on subdivisions under existing zoning as well.

5. Population Limits.

A number of localities have attempted to place direct or indirect limits on population instead of or in addition to planning for growth. This has been done by various means. In Boulder, Colorado, a citizen initiative to limit population to 100,000 failed; but in Boca Raton, Florida, a similar initiative was passed as an amendment to the city charter, limiting the number of dwelling units in the city to 40,000. Petaluma, California, attempted by City Council action to limit the number of dwellings constructed in the city to 2,500 in five years under a comprehensive plan for directing and limiting growth. A federal district court declared the plan unconstitutional (see Sec. B.3. of this volume, above), but the litigation has not been completed. The town of New Castle, New York, tried a similar scheme in 1956, limiting to 112 the number of residential building permits issued each year in order to avoid over-crowding of schools. That scheme was declared by a state court to be beyond the

town's powers because not provided for by state enabling legislation. A number of localities have attempted to limit population by zoning for large lots exclusively. Such zoning has occasionally been approved by the courts on the theory that aesthetic considerations are rationally related to "general welfare". Language in the recent United States Supreme Court decision Village of Belle Terre v. Boraas, ___ U.S. ___, 39 L.Ed. 2d 797 (April 1, 1974), strongly indicates that large-lot zoning for such purposes would be proper. Justice Douglas for the Court said that a city may "lay out zones where family values, youth values and the blessings of quiet seclusion and clean air make the area a sanctuary for people." But where it has appeared to the court that the primary purpose was to exclude outsiders, the zoning has been held unconstitutional. Normally, where a zoning statute is alleged to have exclusionary effect courts have subjected the statute only to the limited scrutiny of the "rational basis" test, requiring only that there be some rational relationship to a proper governmental purpose (such as promoting the general welfare). But in the case holding the Petaluma plan unconstitutional, the federal district court for the Northern District of California

required the city to show some compelling governmental interest which would uphold its exclusionary plan; and the city could not do so. The difference lies in the fact that the California court found that a fundamental constitutional right--the right to travel--was involved.

It is becoming more evident that, whatever the rationale given for reviewing the statute, courts will strike down any legislation which does exclude and is intended to exclude a significant number of prospective residents from a locality. Some exclusionary effect is always allowed, since any restrictive zoning must necessarily exclude to some extent. Total exclusion probably is never allowable. But the dividing line between that which is allowable and that which is not is difficult to distinguish except in extreme cases. The suggestion of the California court, in holding the Petaluma plan unconstitutional, was that a municipality may not limit its growth to less than the "natural" rate dictated by prevailing market demand. However, this is clearly contrary to the conclusion of the New York court case concerning the Ramapo plan and it appears to be contrary to at least the implications of the leading zoning case of all, Village

of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), which upheld use zoning as constitutional.

It can be concluded from recent cases that a city or county planning to limit "market demand" growth in any way would be well advised to avoid setting any form of numerical quota. It is to be noted that the Petaluma limit of 500 dwelling units per year was found unconstitutional, while the Ramapo plan was upheld even though it has in fact limited construction in that town to 300-350 housing units per year. Limitations imposed by lack of physical facilities (for example, water supply or sewage treatment) will probably be upheld only if the limitations are such that they cannot be overcome by spending more money. Courts have in some cases given weight to the presence of quotas for low or moderate income housing as an indicator that the city is making a "good-faith" attempt to meet problems of growth; but such a quota was disregarded in the Petaluma case, and the Virginia Supreme Court, in Board of Supervisors of Fairfax County v. DeGraaf Enterprises, Inc., 214 Va. 235, 198 S.E.2d 600 (1973), has held such a requirement to be "socio-economic zoning" not authorized under the Virginia zoning enabling act and also to be

an unconstitutional "taking" because it requires private sale at a price not set by a free market.

While a population limit, if not overturned by the courts, can be effective in preserving the amenities of life for a given locality in a rapid-growth area, it clearly cannot be effective on a wider scale in the face of an ever-increasing population. It is also of questionable relevance in areas where a large segment of the population desires economic growth more than preservation of the status quo; but that is a question to be answered only by the citizens themselves. The adoption of such limits must inevitably lead to more sprawling development than would otherwise occur--the problem is spread more thinly but over a wider area. Unless there is a regional planning body, planned growth may thus be traded for unplanned growth in outlying areas.

6. Federal Aid.

Where population growth in an area is the result of federal activities, the federal government will pay the cost of schools for children who would otherwise be without schools (20 U.S.C. 631 et seq.) and will pay the financial burden incurred by the locality for educating children for

whose presence the federal government is responsible (20 U.S.C. 236 et seq.). Loans or grants to local government for public facilities are also made available where the need for such facilities arises from defense-related federal activity (42 U.S.C 1531 et seq.). These provisions are not expected to be relevant to the coal development areas and therefore will not be discussed in further detail. They have, however, represented a major response to the problems of growth in a few of the rapid population growth areas surveyed.

7. New Towns.

New towns are not really a new concept, being traceable to the 19th-century company town and before that to the pioneer or colonial settlement. Recent renewed interest may be ascribable to a desire to escape to a greater or lesser extent from existing municipal governments or municipal environments. Currently underway in the country are some three dozen developments which have been styled "new towns". However, only one of these is "new" in the sense of being self-contained and economically self-sufficient. That is Soul City, North Carolina, which is planned

by a black-owned corporation and is just beginning development under a federal Title VII guarantee. (See 42 U.S.C.A. 3901 et seq.) A second has been proposed to be built on the Navajo Indian Reservation in support of proposed coal gasification plants there. All of the others depend to some extent upon existing population centers for employment and services, and most are satellites of existing cities--that is, they are in essence a different variety of suburb. Approximately one-half of them are backed by Title VII grants or guarantees. These include several being developed by the Urban Development Corporation, an agency of the state of New York. Several of the oldest and best-known, including Reston, in northern Virginia, Columbia, in southern Maryland, and Irvine, on California's Irvine Ranch, are entirely privately financed but are not all experiencing financial success.

The legislation which set in motion the development of many of these new towns was Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C.A. 3901 et seq.) under which the United States may provide bond guarantees of up to \$50 million on a single development. To obtain a guarantee the developer must go through a complex and

detailed initial planning process, including a physical plan, social plan, environmental study, and evaluation of services and governance mechanisms. However, the Office of New Communities Development has been understaffed and some programs under the Act have gone unfunded. Combined with the moratorium on government housing funding, these factors have made questionable the extent to which a developer should hope for federal guarantees for new towns.

Eligibility for Title VII financing is not limited to private developers. At least three new towns begun by the State of New York through its agency the Urban Development Corporation are backed by Title VII guarantees or grants. These are the towns of Audubon, Lysander, and Roosevelt Island (a "new town in town" on an island in the Hudson River beside Manhattan). The UDC, discussed at more length below under Section 9, was set up by the State to operate in the same manner as a private developer.

Since most of the new towns recently begun are not self-sufficient entities, governmental and public services have proved to be a problem in many instances. Incorporation would permit the town to control its own affairs and provide its own services and would make available some kinds of

financing not available to non-governmental bodies, such as tax-free bond issues and federal and state grants. However, the legislative limits which some states place upon municipal debt and tax rates could offset the advantage.

Unincorporated new towns, on the other hand, must depend upon either county or private organizations for services, or upon special districts if those may be organized under state law. County government may be subject to the same debt and taxation limits as incorporated municipalities and may also lack other powers needed by municipalities but not normally granted to counties by the state legislature. Reliance upon outside private organizations ordinarily means that planning and services are fragmented. Both of these shortcomings are illustrated in the experience of Mohave County, Arizona, site of the unincorporated new town of Lake Havasu City.

Special districts which may pledge the public credit for public purposes are used in many parts of the country. If single-purpose districts are used, planning may become fragmented just as with private company service; and unless the district is under the direct control of some publicly-elected body, services may effectively be removed from the

control of the electorate. In Redwood City, California, a "dependent district" has been used to meet this problem. There, an improvement district serving the Redwood Shores development was annexed to Redwood City, with the city council serving as the district board.

A possible alternative, and one utilized at both Reston, Virginia, and Columbia, Maryland, the oldest and best-known of the modern new towns, is government by a private homeowners' association. However, these have power only within limited spheres, such as recreation areas and maintenance; and most services are provided by the counties in which the towns are located.

Lack of political control over the government which controls public services can be disastrous for a new town, as is shown by the quandary of Reston. Reston is unincorporated, and its services are provided by Fairfax County. There is strong controlled-growth sentiment in the county, and the County Board of Directors has denied sewer permits for the undeveloped areas in the original Reston plan. There are currently annual carrying charges of \$5 million on the original \$50 million investment and on committed construction, so a failure to realize income from new build-

ing could force the developer (the second to have met financial difficulties with the town) to go out of business.

A final possible alternative is for the developer himself to provide public services and act as governor, at least until the development is completed; but this imposes such heavy costs that few developers would consider it. However, a company developing a coal mine far from any incorporated area might view the matter differently from a commercial developer whose income is from the development itself. In the coal company's case, initial expense is less important than having living accommodations available for the necessary workers, and the company could be more willing to stand the cost. This is of course the genesis of the traditional company town. But the same economic factors could lead a company to finance a town which remained under the planning and governmental control of existing local government.

A final difficulty with establishment of new towns is getting sufficient land into the hands of the developer. This problem, like that of financing public facilities, could be somewhat simplified in the coal development areas by the fact that large blocks of land already exist in

single ownership, sometimes in the hands of the company most interested in having a work force available.

8. Statewide and Substate-Regional Planning.

A number of states faced with rapid growth over a large portion of the state have reacted by removing control of land use from the hands of local government. This action apparently reflects a belief that local government will not have the strength to withstand extreme economic pressures or temptations, as well as the realization that growth over a wide area cannot be effectively guided by piecemeal planning.

The states of Hawaii and Vermont, and the territory of Puerto Rico, have placed full control of land use in the hands of a state planning board, the state of Maine has done so for developments having a significant environmental effect, and Montana has done so for public utilities. (These statutes are reproduced in Volume Two of this report.) Under the Vermont and Puerto Rico schemes, not only is planning done at the state level, but actual permission to build must be sought from the state agency.

Other states have gone less far down the road to state control. Oregon and Florida, for example, have statutes giving the state control over designated developments of state-wide significance (Oregon) or critical ecological concern (Florida Environmental Land & Water Management Act). Both states leave primary control of land use with the municipalities and counties, but Oregon law provides that the state will exercise control if the municipality or county does not. (These statutes are reproduced in Volume Two.)

In other instances, states have removed planning control from local hands into the hands of a substate regional body rather than a state-wide agency. California's San Francisco Bay Conservation and Development Commission (see Volume Two) is perhaps the most carefully structured of these, but it is a single regional agency in a state which still relies primarily on county and municipal planning, or voluntary aggregation of those units, throughout most of the rest of the state. Florida, in addition to state-level control of critical areas of ecological concern, has both state and substate-regional review under its Comprehensive Planning Act (reproduced in Volume Two) for projects which qualify as "developments of regional impact." The primary

review is done by regional planning councils or regional water management districts, with ultimate authority resting with the state upon appeal. Most states, under their zoning enabling act, make it possible for counties and municipalities to establish joint planning agencies with other governments at the same levels if they so desire; but in that case land use control is for practical purposes still in the hands of the individual county or municipality.

9. Governmental Development.

The state of New York has short-cut the development control process by setting up a state corporation which can itself act as developer. This agency is known as the Urban Development Corporation. (The statute establishing the UDC is reproduced in Volume Two). The Urban Development Corporation was formed in 1968 for the purposes of acquiring, constructing, and improving industrial and commercial facilities, cultural, educational, and recreational facilities, residential housing and appurtenant facilities. The corporation is governed by a nine-man Board of Directors, including the Commissioner of Commerce, the Super-

intendent of Banks, the Superintendent of Insurance, the Director of the Office of Planning Services, and five others appointed by the governor. It can sell and purchase property, plan and carry out construction or rehabilitation projects, make mortgage loans, and issue its own bonds. It may sell or lease residential projects to a housing company or to a municipality or housing authority, and may sell or lease industrial projects to any buyer or lessor without public bids. It may create and function through subsidiaries. Its revenues and monies are handled by the Commissioner of Taxation. The corporation and its property are exempt from taxes, but the state pays property taxes on the corporation's properties to political subdivisions to offset their loss of revenue.

The state of Hawaii and the territory of Puerto Rico have created agencies with similar but less extensive powers to develop land for the public benefit. Hawaii's Department of Land and Natural Resources has power to declare a shortage of residential land anywhere in Oahu, the most densely populated of the islands, and the Department may purchase, develop, and resell lands to correct such a situation. (The statute is reproduced in Volume Two.) The Puerto Rico Land

Administration has "land-banking" powers--that is, the ability to purchase and hold undeveloped lands for future development in order to defeat speculation--but not the power to actually construct housing or other buildings. (The statute is reproduced in Volume Two.) Similar land-banking powers are exercised by the highway departments of most states for acquisition of rights-of-way.

Proper enabling legislation could of course make similar powers available to counties or municipalities as well. This has been done at least at the metropolitan city level in Sweden and the Netherlands, where large cities for years have acquired land for future resale to developers. Urban Renewal legislation already existing in the three states under study here (see Sec. ID-5 of Volumes Three, Four and Five of this report) in fact gives municipalities in those states all of the powers necessary to carry out development, except that the exercise of those powers is limited to "blighted areas" requiring redevelopment. Amendment of statutes to allow initial development in newly annexed areas would be relatively simple, as would extension of such powers to county government where the county has planning responsibility for unincorporated areas.

III. PRINCIPLES FOR LEGISLATION

A. Introduction

The purpose of this section is to distill out those principles which appear to lie behind the more successful responses of the governing bodies of other areas to rapid growth, and also to state the principles behind those responses which were unsuccessful or which compounded the initial problems. This section is a statement of basic principles only, and does not attempt to go into detail on the mechanics or administration of any particular course of action. Some of these principles may be applicable to action by state government, some by county or municipal government. Different conditions existing within the coal development regions will undoubtedly make some principles more or less applicable than in the area from which they are drawn. The desirability of action upon any of them with respect to its own citizens must of course be made by each governing body for itself. They are set forth here not as an action program but as a chart to some of the shoals and beacons which have appeared in the course of meeting the problems of growth in other areas.

B. Principles

1. Land Use Control & Planning - Enabling Acts.

A. WHERE THE STATE GOVERNMENT DOES NOT DESIRE TO REGULATE LAND USE ITSELF, BROAD ENABLING LEGISLATION COULD BE ADOPTED TO GIVE MUNICIPALITIES AND COUNTIES THE ABILITY TO REACT TO LOCAL PROBLEMS OF GROWTH.

Explanation: If enabling legislation does not exist or is limited by its terms, the counties and municipalities may be precluded from reacting to problems facing them, while the state may not react because the problem is too localized to demand attention or because the statewide impact is so slight that control measures imposed statewide would be politically infeasible. It has been the experience of several growth areas that such a legislative posture keeps action from being taken at any level.

B. ENABLING LEGISLATION COULD GIVE COUNTIES THE SAME ZONING, PLANNING AND SUBDIVISION REGULATION POWERS AS MUNICIPALITIES.

Explanation: In some instances rapid growth outside incorporated areas has been entirely unregulated, even though adequate enabling legislation exists for municipal-

ities, because the enabling legislation was not extended to counties. Growth does not always occur in the expected places.

C. INCORPORATION OF SMALL COMMUNITIES OR SPARSELY-SETTLED AREAS COULD BE ALLOWED.

Explanation: Non-traditional growth patterns have occurred in some areas, with subdivisions of near-suburban densities scattered over broad areas. These cannot be incorporated under the laws of some states, with the result that the county must provide public services which it is not adapted to provide.

D. ENABLING LEGISLATION COULD GIVE COUNTY AND MUNICIPAL GOVERNMENT ALL ZONING AND REGULATORY POWERS WHICH ARE CONSTITUTIONALLY PERMISSIBLE.

Explanation: Most state enabling legislation was based upon the Department of Commerce Standard Zoning Enabling Act, which specified certain limited purposes for which zoning could be imposed, based upon the 1920's understanding of the purpose of zoning. A number of courts have held modern regulatory techniques invalid because not authorized under the enabling legislation, even though the techniques are not constitutionally objectionable. An example of broad

enabling legislation is Colorado's H.B. 1034 adopted by the 1974 session of the Colorado General Assembly (reproduced in Volume Two of this report).

E. WHERE UTILITIES SERVICES ARE PROVIDED BY PRIVATE COMPANIES, COUNTY PLANNING AGENCIES COULD BE ENABLED TO BUY OUT OR ENFORCE CONSOLIDATION OF THE PRIVATE COMPANIES.

Explanation: In instances of rapid growth outside incorporated areas, private companies supplying water or other services have proliferated, each serving a small area. Consolidation would promote more efficient service.

F. URBAN RENEWAL LEGISLATION COULD BE AMENDED TO PROVIDE EQUAL POWERS TO MUNICIPAL GOVERNMENT AND COUNTY GOVERNMENT, AND TO ALLOW THOSE POWERS TO BE EXERCISED IN DEVELOPMENT OF NEW AREAS AS WELL AS RESTORATION OF BLIGHTED AREAS.

Explanation: Urban Renewal legislation typically gives municipalities the power to act as developer in areas in which private investment has failed to provide needed housing and facilities, but the power is limited to restoration of "blighted areas." No great modification would be required to enable both municipal and county governments

to take action in new-growth areas where private investment has been insufficient.

2. Land Use Control & Planning - State Regulation.

A. WHERE RAPID GROWTH IS WIDESPREAD, PLANNING AND REGULATORY POWER MAY BE MORE EFFECTIVELY EXERCISED IF CENTERED ABOVE THE LOCAL LEVEL.

Explanation: In instances of widespread growth, local jurisdictional boundaries interfere with effective control because the problems are more widespread than the power to control them. Piecemeal regulation by individual localities has ordinarily led to conflicting approaches or attempts to pass the problems on to other areas rather than solving them at home. Regional or state agencies with actual power to make land use decisions could exercise more effective control.

B. IF PRIMARY LAND USE CONTROL IS AT THE COUNTY OR MUNICIPAL LEVEL, THE STATE COULD RETAIN POWER TO PLAN FOR USE OF ALL LANDS ON WHICH NO COUNTY OR MUNICIPAL PLAN EXISTS.

Explanation: Local governments which are not required to plan, or which are subject to only supervisory powers of

the state, have in some instances failed to implement local plans. The state planning department should be able to exercise effective control in such a case.

C. A STATE AGENCY ABLE TO ACT AS A DEVELOPER CAN BE EFFECTIVE IN PROVIDING NEEDED HOUSING AND FACILITIES WHERE PRIVATE INVESTMENT IS INSUFFICIENT.

Explanation: A state corporation such as the New York State Urban Development Corporation would be adaptable to development in new-growth areas. Where private investors or local government might be hesitant to invest in advance for fear the growth would occur elsewhere or be temporary, a state agency able to act on a large scale could avoid such losses in the long run through its ability to average them out over a number of areas.

D. THE STATE COULD MAKE PLANNING AID, IN THE FORM OF EXPERTISE RATHER THAN MONEY, AVAILABLE TO LOCAL GOVERNMENTS.

Explanation: Many municipalities and counties which have no experience with planning would be unable to effectively use monetary grants without outside advice. Teams of experts employed by the state would be able to aid such

governments in establishing effective planning departments and procedures.

E. THE STATE, OR LOCAL GOVERNMENT UNDER ENABLING ACTS, COULD REQUIRE ENVIRONMENTAL IMPACT STATEMENTS FOR ALL DEVELOPMENTS OF SIGNIFICANT ENVIRONMENTAL IMPACT.

Explanation: Traditional zoning and subdivision regulation have been found insufficient to protect the environment in rapid growth areas, especially in mountainous or semi-desert areas where natural balances are easily disturbed. Requirement of an impact statement on even relatively small-scale projects would give better planning information. Care must be taken, however, not to make requirements so burdensome as to raise the cost of development beyond the point of practicality, as an unintended side effect.

3. Financing and Taxation.

A. STATE LIMITS ON RATES OF TAXATION OR RATES OF INCREASE OF TAXATION LEVIED BY COUNTY AND MUNICIPAL GOVERNMENTS COULD BE AVOIDED OR REMOVED.

Explanation: Some states control the rate at which local governments may tax or increase their taxes. In a

rapid growth situation such limits result in an effective lowering of the rate at which the local government may spend, just at the time at which it needs to be able to increase its spending to provide for the future.

B. MOBILE HOMES INSTALLED IN A TRAILER PARK COULD BE TAXED AS REAL PROPERTY, RATHER THAN AS VEHICLES.

Explanation: Mobile homes have traditionally been taxed as vehicles, which often results in a lower tax than if they were taxed as property. A permanently-installed mobile home requires the same services as any other house, and it should be taxed at a rate commensurate with the cost of public services.

C. PROBLEMS OF GROWTH MAY BE ALLEVIATED IF THE STATE DIRECTLY FINANCES LOCAL FACILITIES IN ADVANCE OF ACTUAL GROWTH.

Explanation: There are many localities in which growth is nearly if not entirely certain to occur within the very near future, but in which citizens remain reluctant to pass bond issues to fund the necessary facilities because they remain unconvinced that the growth will actually occur, either because they are uninformed of the true extent of the problem

and the degree of commitment already made by outside agencies (such as coal companies), or because they hope to avert the growth by refusing to provide for it. In such cases, outside financing may be the only solution. Various mechanisms are available to finance these facilities: direct state grants, a state development agency such as the New York Urban Development Corporation, or state control of the local property tax.

D. STATE OR LOCAL GOVERNMENTS COULD BE ENABLED TO ACCEPT GIFTS FROM PRIVATE COMPANIES WHOSE ACTIVITIES GIVE RISE TO PUBLIC EXPENSE.

Explanation: In a few instances, private companies have expressed an interest in paying the costs of construction of housing and facilities for employees in growth areas, but normally no administrative structure exists for handling such donations. In addition, companies whose activities impose development costs upon the public can justifiably be expected to finance that cost, whether the activity be the development itself (as under the Loudoun County, Virginia, zoning ordinance) or some unrelated activity such as coal mining.

E. STATE OR LOCAL GOVERNMENTS COULD COMPEL PAYMENT OF FEES BY PRIVATE COMPANIES TO AFFECT PUBLIC COSTS ARISING FROM COMPANY ACTIVITIES.

Explanation: Companies whose activities impose costs upon the public can rightly be asked to pay that cost. The existing ordinance in Loudoun County, Virginia, requires such a payment where the activity is the development itself, but the principle is easily extendable to other activities which give rise to public costs, such as coal mining.

F. CONSTRUCTION COMPANIES COULD BE REQUIRED TO PROVIDE TEMPORARY FACILITIES, OR EQUIVALENT PAYMENTS, TO ACCOMMODATE POPULATION GROWTH DIRECTLY RESULTING FROM THEIR ACTIVITIES.

Explanation: This principle is a sub-component of the one above, but is not always obvious. Construction of large projects may result in population growth several times greater than the permanent growth resulting from the same project, so that permanent facilities required are less extensive than temporary requirements. Costs of temporary housing, schools, sewage treatment facilities, etc., if levied against the contractor, would be passed on into the cost of the project, and thus be borne at their source.

G. A TAX ON ACTIVITIES WHICH RESULT IN IMPOSITION OF PUBLIC COSTS COULD BE IMPOSED AND USED TO MEET THE PUBLIC COSTS.

Explanation: Under Principle E above, a company whose activities give rise to a need for facilities could be billed directly for the facilities. Under this Principle, a tax would instead be levied upon the company's product. This has the same effect of placing the cost upon the cost-producing activity, but is much less subject to attack in the courts upon constitutional grounds.

H. LOCAL GOVERNMENTS COULD BE ENABLED TO LEVY SALES AND INCOME TAXES WITHIN THEIR OWN JURISDICTIONS.

Explanation: These taxes grow automatically with the growth of population and thus overcome the lag which is built into the property tax, which does not provide increased revenues until improvements are made and assessed as a result of the expanding population. They are also paid from the beginning by the beneficiaries of the government expenditures which they support, whereas new residents may not begin fully to support local government through property taxes for some time after their arrival, and temporary residents never.

4. Building Codes.

A. BUILDING CODES COULD STATE PERFORMANCE STANDARDS RATHER THAN PARTICULAR METHODS OF ACCOMPLISHING A RESULT.

Explanation: In many areas, building codes still require certain ends (such as a structurally-sound building) to be accomplished in a stated way. The code thus rules out technological advances which may offer a better or cheaper way to accomplish the same end.

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UTILIZATION OF THIS STUDY

The Old West Regional Commission has requested this Study in order to provide useful information to an unusually wide spectrum of interests. It is highly probable that elected officials from the village to the federal level, governmental administrators and planners, a variety of private businesses and countless individual citizens will all find that some facet of the Study is addressed to their respective concerns. It is not surprising, therefore, that no single methodology for utilizing the six volumes which comprise this Study is equally suited to the needs of all potential beneficiaries. However, it is possible to suggest several general approaches by which various materials contained herein may be identified and located.

If verbatim statutory materials or other specific items of information are sought, one useful device for determining whether they are included in the Study, and if so, in which volume, is the "Summary of Contents." This concise outline lists the Volume titles and the major sections of the Study, and is reproduced at the beginning of each volume.

If the "Summary of Contents" fails to provide adequate guidance, the "Summary of Study" contained in Volume One offers a far more comprehensive introduction to the Study's contents. The "Summary of Study" briefly describes the substance of each of the six volumes and provides a limited sampling of the analytical sections of the Study. From the "Summary of Study" a particular volume may be identified as the most probable source of the information sought. In that event, the Overview which appears at the beginning of the relevant volume should then be examined. Each Overview provides a narrative description of the volume and describes the rationale utilized to select and organize the materials contained in that volume.

All statutes reproduced in the Study have been collected in Volumes Two, Four, Five and Six. Selected statutes from the states of Montana, North Dakota and Wyoming are located in Volumes Four, Five and Six respectively. Specific legislation from any of these three states can be located by referring to the Common Index found in the front of the appropriate volume. A reader interested in statutes or ordinances from any other state should examine the Table of Contents for Volume Two.

A more general treatment of the problems associated with rapid population growth than that which is provided by the collection of statutes appears in the subsection of Volume One entitled "Responses of Areas of Previous Rapid Growth". This section describes and analyzes the ways in which selected areas have responded to growth patterns. It is suggested that the temptation to turn immediately to the subsections dealing with "Problems Encountered" and "Government Reactions" be resisted. Inquiry should instead begin with an examination of the first subsection entitled "Areas of Interest: Problems and Responses." This approach is recommended because the description of experiences in other geographic areas provides an essential foundation for the articulation of common problems and the analysis of available responses. In a similar vein, the "Principles for Legislation" which form the concluding subsection of Volume One can be fully understood only if the three prior subsections have been carefully considered.

A variety of detailed references are located in the bibliographies located in the second portion of Volume Three. Among the items included in the bibliographical section are: sources for obtaining additional data and practical assistance with respect to specific problems, an

extensive bibliography of useful publications, and a list of individuals and organizations throughout the United States familiar with the topics considered in this Study. Also contained in the bibliographical section is a list of Environmental Impact Statements and other Reports and Studies recently completed or now in progress, together with sufficient information to obtain copies of these documents. Thus, the bibliographies provide access to voluminous additional information concerning both specific geographic areas and specific topics of interest.

Legislative innovations in response to the problems of rapid population growth, and the judicial construction of these innovations, are currently evolving at a rapid pace. Accordingly, it must be recognized that the material included in this Study was compiled on or before September 3, 1974 and may have been altered or amended subsequent to that date. Questions concerning the applicability to specific problems of any portion of the Study should be addressed to governmental agencies or private legal counsel particularly familiar with those specific problems. However, general comments concerning the Study or inquiries about its reproduction may be addressed to the Old West Regional Commission.

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